

IN THE UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 EL PASO DIVISION
 VOLUME 4 OF 9

LULAC, et al.,) (EP:21-CR-259-DCG-JES-JVB
) ((Lead Case)
Plaintiffs,) (
) (
ROY CHARLES BROOKS, et al.,) (EP:21-CV-00991-DCG-JES-JVB
) (
Plaintiffs,) (
) (
vs.) (EL PASO, TEXAS
) (
GREG ABBOTT, in his official) (
capacity as Governor of Texas,) (
et al.,) (
) (January 26th, 2022
Defendants.) ((8:59 a.m. to 12:59 p.m.)

HEARING ON BROOKS PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

FIFTH CIRCUIT JUDGE JERRY EDWIN SMITH
 U.S. DISTRICT JUDGE DAVID C. GUADERRAMA
 U.S. DISTRICT JUDGE JEFFREY V. BROWN

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DIRECT - SELIGER

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08:59:28 1 (Open court.)

08:59:28 2 JUDGE GUADERRAMA: All right. Mr. Dunn, we were in
08:59:30 3 the middle of the deposition testimony of Senator Seliger.

08:59:35 4 MR. DUNN: Shall I proceed?

08:59:37 5 THE COURT: Yes, sir.

08:59:37 6 (Videotaped deposition starts).

08:59:37 7 VIDEOTAPED DEPOSITION OFFERED BY MR. DUNN

08:59:37 8 SENATOR KEL SELIGER,

08:59:37 9 DIRECT EXAMINATION BY THE DEFENSE

09:00:04 10 BY MR. HUDSON:

09:00:04 11 Q. -- Senate District 10, have you seen that document
09:00:04 12 before?

09:00:04 13 A. Yes.

09:00:04 14 Q. And what is that document?

09:00:04 15 A. It's an article from the *Austin American Statesmen*.

09:00:06 16 Q. Is that a true and accurate copy of the article dated
09:00:08 17 January 24th, 2019, titled "Patrick Criticizes Soldiers
09:00:12 18 Attitude, Lack of Teamwork"?

09:00:14 19 A. Yes.

09:00:15 20 Q. So in addition to the issues that you had with Senator
09:00:21 21 Patrick -- excuse me -- Lieutenant Governor Patrick in 2019,
09:00:27 22 he'd also criticized you for not being a team player; is that
09:00:30 23 right?

09:00:30 24 A. Yes.

09:00:31 25 Q. And that again was based on your 2017 votes against

KATHLEEN A. SUPNET, CSR

09:00:34 1 priorities, right?

09:00:35 2 A. Yes.

09:00:35 3 Q. So, challenger in 2014, challenger in 2018, you had a
09:00:44 4 dispute over remarks made about Lieutenant Governor Patrick's
09:00:48 5 staffer in 2019; Lieutenant Governor Patrick criticizes you as
09:00:54 6 not being a team player in 2019, right?

09:00:57 7 A. Um, hum.

09:01:02 8 UNKNOWN SPEAKER: Is that a yes?

09:01:02 9 A. Yes, I'm sorry.

09:01:02 10 BY MR. HUDSON:

09:01:18 11 Q. I'm going to hand you what I'm going to mark as
09:01:21 12 Defendant's 11. Take a look at that and see -- tell me when
09:01:29 13 you're finished.

09:01:31 14 For purposes of identification and in addition to
09:01:33 15 marking this as Exhibit 11, this is also Exhibit 20 in the
09:01:37 16 response to plaintiff's preliminary injunction motion.

09:01:44 17 Have you ever seen that document before?

09:02:58 18 A. Yes.

09:02:58 19 Q. What is it?

09:02:59 20 A. It is an article from *Texas Tribune*, October 7th,
09:03:03 21 2021.

09:03:04 22 Q. To your knowledge, is that a true and accurate copy of
09:03:08 23 the article titled "Weighing Re-Election Bid, GOP Texas Senator
09:03:12 24 Kel Seliger Confronts Redrawn District, Trump Endorsement of
09:03:16 25 Primary Challenger," dated October 7th, 2021?

09:03:19 1 A. Yes.

09:03:20 2 Q. Now, the first full paragraph on page 2 of this
09:03:24 3 document -- follow along with me --

09:03:24 4 A. Um-hum.

09:03:26 5 Q. -- reads: Heading into election season, Amarillo
09:03:29 6 State Senator Kel Seliger says he feels like members of his own
09:03:31 7 party might be using redistricting to oust him after years of
09:03:32 8 tension with Lieutenant Governor Dan Patrick, a fellow
09:03:37 9 Republican.

09:03:37 10 Did I read that correctly?

09:03:39 11 A. Yes.

09:03:39 12 Q. So you thought politics was at play with potentially
09:03:40 13 being redrawn out of your district; is that right?

09:03:43 14 A. No, not being redrawn out of my district, no.

09:03:48 15 Q. Okay.

09:03:49 16 A. Being redrawn is such a factor to make it more
09:03:52 17 difficult for me to get re-elected in that same district.

09:03:56 18 Q. Well, in fact, the article goes on to read: Seliger's
09:04:00 19 deciding whether he will even run for re-election, but if he
09:04:02 20 does, he's not starting down perhaps his toughest primary, yet.
09:04:05 21 Is that right?

09:04:05 22 A. Yes.

09:04:06 23 Q. You would agree that the district was redrawn to be
09:04:09 24 even more Republican, making it difficult for you to win a
09:04:15 25 primary; is that right?

09:04:15 1 A. Being more Republican doesn't make it difficult for me
09:04:21 2 to win a primary.

09:04:22 3 Q. So why were you concerned about being or drawing a
09:04:23 4 tougher race that year?

09:04:25 5 A. Because they were taking counties that I had
09:04:28 6 representative -- represented before, and taking those counties
09:04:30 7 out of the district and putting counties in the districts that
09:04:34 8 are closer to Midland, thinking that they would affect the vote
09:04:37 9 in favor of the Midland candidate.

09:04:40 10 Q. In fact, this article goes on to say that: On
09:04:45 11 Tuesday, former President Donald Trump, a close ally of
09:04:51 12 Lieutenant Patrick, endorsed Sparks and bashed Seliger as a
09:04:52 13 quote-unquote "RINO" -- Republican in the name only -- in a rare
09:04:59 14 intervention in the Texas legislative race by the former
09:05:00 15 President.

09:05:00 16 A. Yes.

09:05:01 17 Q. Did I read that correctly?

09:05:01 18 A. Yes.

09:05:02 19 Q. Do you consider yourself a RINO?

09:05:04 20 A. Of course not.

09:05:05 21 Q. What does a RINO mean?

09:05:08 22 A. Republican in name only.

09:05:09 23 Q. And what does that mean?

09:05:11 24 A. I'm -- I'm not sure I know. It's what if what people
09:05:14 25 call in the far right call people who are not on the -- the far

09:05:18 1 right. What the President also said that I was a RINO when I
09:05:24 2 was like Mitt Romney. And next to probably Ronald Reagan and
09:05:30 3 John McCain, there was probably no one I'd rather be compared to
09:05:36 4 than -- than Romney, which goes to show just how really good the
09:05:39 5 opinions of the former President are.

09:05:41 6 Q. You would agree you're the most liberal Republican in
09:05:45 7 the Texas Senate, right?

09:05:46 8 A. I accept no -- no part of liberal. I am not a
09:05:52 9 liberal. Do I have a less so-called conservative voting record?
09:05:59 10 According to Rice University and Texas Public Policy and the
09:06:05 11 rest of my colleagues, I do, but a lot of those are based on
09:06:09 12 fallacious measurements and assumptions. So my voting record is
09:06:14 13 80-some-odd-percent with the Republican majority of the Senate,
09:06:20 14 that is not a liberal voting record.

09:06:22 15 Q. I'm going to hand you what I'm going to mark as
09:06:25 16 Defendant's 12.

09:06:27 17 Have you ever seen that article before?

09:06:30 18 A. I believe so.

09:06:31 19 Q. Go ahead and take a look and let me know when you're
09:06:37 20 finished.

09:06:38 21 A. Yeah, I've read it at the time.

09:06:40 22 Q. Is this a true and accurate copy of the June 18, 2021,
09:06:48 23 article titled "The Back Mic: Analyzing the 2021 Texas
09:06:52 24 Legislature's Conservative to Liberal Rankings"?

09:06:54 25 A. I believe so.

09:06:55 1 Q. And if you'll flip over to page -- and I'll count them
09:07:07 2 here, because the pages aren't numbered. There's one full page,
09:07:11 3 two full pages -- three full pages, and on the fourth full page,
09:07:17 4 number 1, it reads Bryan Hughes; do you one that?

09:07:19 5 A. I'm not there, yet.

09:07:20 6 Q. Okay.

09:07:22 7 A. Now I have it.

09:07:27 8 Q. Okay. Now, do you see in the top left-hand corner it
09:07:31 9 says "2021 Rank"?

09:07:32 10 A. Yes.

09:07:33 11 Q. All right. And above that, there's discussion about
09:07:37 12 the methodology, but the 2021 rank is 1 through 18 Republicans?

09:07:46 13 A. Yes.

09:07:47 14 Q. Now you would agree that there are 18 Republicans in
09:07:50 15 the Texas Senate, right?

09:07:50 16 A. I do.

09:07:52 17 Q. For the 87th Legislature?

09:07:53 18 A. Yes.

09:07:54 19 Q. Now, number one is Bryan Hughes, right?

09:07:57 20 A. Yes.

09:07:57 21 Q. And you are 18th?

09:07:58 22 A. Right.

09:07:59 23 Q. So based on Rice University's Baker Institute of
09:08:02 24 Public Policy, out of the all of the members of the Republican
09:08:05 25 Party in the Senate, you are the least conservative amongst

09:08:09 1

them?

09:08:10 2

A. Yes. And I would also say that the Baker Institute and Rice University does terrible work.

09:08:16 3

09:08:20 4

Q. So you disagree with them finding that you're the least conservative member of the Texas Senate?

09:08:22 5

09:08:24 6

A. Yeah, I do.

09:08:25 7

Q. Okay. Who did you think you're more conservative than with regard to Republicans in the Texas Senate?

09:08:28 8

09:08:30 9

A. I would not necessarily make that claim of anybody. But do I think I'm more liberal? No. Am I less conservative? Probably not.

09:08:32 10

09:08:38 11

09:08:38 12

Q. So we don't like Rice University.

09:08:42 13

Let's take a look at --

09:08:42 14

A. Love Rice University. I think Baker Institute is poorly manned.

09:08:48 15

09:08:56 16

Q. I'm going to show you what I'm going to mark as Defendant's 14.

09:09:07 17

09:09:14 18

Have you ever seen that document before?

09:09:15 19

A. I have.

09:09:16 20

Q. Go ahead and take a look and we'll talk about it.

09:09:19 21

A. I've got it.

09:09:20 22

Q. Okay. Is this a -- have you seen this before?

09:09:25 23

A. I have.

09:09:25 24

Q. To your knowledge, this is a true and accurate copy of the October 20, 2021, article from the *Amarillo Pioneer* --

09:09:28 25

09:09:32 1 A. It is.

09:09:33 2 Q. -- called "Seligers calls it quits. Republican Senator
09:09:38 3 not seeking re-election."

09:09:39 4 A. Yes.

09:09:39 5 Q. Why did you decide not to run again?

09:09:43 6 A. Everybody leaves at some point and it seemed like a
09:09:47 7 good time, after what would be 19 years when I leave office.

09:09:51 8 Q. So you are concerned about your district being more
09:09:55 9 competitive in the Republican primary?

09:09:58 10 A. It's always been a concern. More so this time, not
09:10:06 11 necessarily.

09:10:09 12 Q. I'm going to hand you what I'm marking as Defendant's
09:10:12 13 15. And for purposes of identification, I believe this is
09:10:18 14 Exhibit 6-K to the preliminary injunction motion filed by the
09:10:24 15 Brooks Plaintiffs?

09:10:25 16 A. Um-hum.

09:10:26 17 Q. Go ahead and take look at this document and let me
09:10:30 18 know when you finish.

09:10:38 19 A. Okay. I think I'm -- I'm ready. I've seen this
09:10:45 20 before.

09:10:45 21 Q. So I'll just represent to you, I didn't print out the
09:10:48 22 entire *Senate Journal* from that day. This is the relevant
09:10:52 23 portion, I believe page A-49, but I've got the first page of the
09:10:57 24 *Senate Journal* on there and got the last on the back.

09:11:00 25 A. Right.

09:11:01 1 Q. So, I want to turn your attention down to about
09:11:08 2 probably less third of the page where it says Senator West. And
09:11:12 3 if you don't mind, I'll mark it for you so you can find it real
09:11:14 4 easy, because it's kind of a --

09:11:14 5 A. Okay.

09:11:15 6 Q. -- it's kind of an extensive document.

09:11:23 7 Do you see the highlighted portion?

09:11:25 8 A. Yes, sir.

09:11:26 9 Q. So follow along with me as I read that. It says:
09:11:28 10 Senator West: "Now, hold on for one second. This is going to
09:11:31 11 be part of the record. We know we're going to lose this
09:11:34 12 particular vote. It's been said that Senate 10 -- District 10
09:11:37 13 is going to flip. Okay?" Question mark.

09:11:39 14 Did I read that correctly?

09:11:40 15 A. Yes.

09:11:41 16 Q. Now, is Senator West a Democrat?

09:11:44 17 A. Yes.

09:11:44 18 Q. Okay. Senator Powell responds: "That's exactly
09:11:49 19 right."

09:11:50 20 Did I read that correctly?

09:11:50 21 A. Yes.

09:11:50 22 Q. Senator West then says: "So let's get it on the
09:11:52 23 record. Do you believe that your district is being
09:11:55 24 intentionally targeted for elimination as it being a democratic
09:11:55 25 and trending district?"

09:11:59 1 Did I read that correctly?

09:12:00 2 A. Yes.

09:12:00 3 Q. Senator Powell responds: "Absolutely."

09:12:03 4 Did I read that correctly?

09:12:04 5 A. Yes.

09:12:04 6 Q. Do you disagree with Senator Powell?

09:12:08 7 A. No. I -- I don't know this is necessarily a
09:12:12 8 democratic tending district. I haven't seen any of the
09:12:18 9 statistics, but over the last few terms, it's been represented
09:12:21 10 by Senator Kim Brimer and then Senator Wendy Davis and then
09:12:28 11 Senator Connie Burton, a Republican, and now Senator Powell is
09:12:34 12 who's a Democrat.

09:12:35 13 Now, statistically, it may be democratic trending, but
09:12:40 14 that's not the way I've seen it over that period of time.

09:12:40 15 SENATOR KEL SELIGER

09:12:40 16 CROSS-EXAMINATION BY THE PLAINTIFF

09:12:44 17 BY MR. DUNN:

09:12:44 18 Q. Please tell us your name.

09:12:47 19 A. Kel Seliger.

09:12:51 20 Q. Senator Seliger, my name is Chad Dunn. I represent
09:12:54 21 the Brooks plaintiff in this case. Do you understand that?

09:12:54 22 A. Yes.

09:12:55 23 Q. I believe that you and I might have met at a
09:12:55 24 courthouse a few years back in the earlier round of
09:12:58 25 redistricting. Does that sound right to you or...

09:13:00 1 A. I don't recall it specifically, but, yes, that was --

09:13:02 2 Q. Okay. I haven't had any contact with you in years,
09:13:05 3 though, would you agree?

09:13:06 4 A. No.

09:13:06 5 Q. Also representing the Brooks plaintiffs is a lawyer
09:13:10 6 named Mark Gaber, another one named Molly Danahy. Do either of
09:13:10 7 those names sound familiar to you?

09:13:10 8 A. No.

09:13:14 9 Q. People you've spoken with?

09:13:16 10 A. No.

09:13:16 11 Q. Have you spoken with any lawyers in this case, prior
09:13:19 12 to today?

09:13:20 13 A. Not since 2012, 2013.

09:13:25 14 Q. Okay. Which were the lawyers there that you recall?

09:13:28 15 A. Nina Perales.

09:13:29 16 Q. Okay. You spoke with her today during the deposition?

09:13:32 17 A. Yes.

09:13:32 18 Q. Have you spoken with her prior to the deposition
09:13:35 19 today?

09:13:35 20 A. No.

09:13:35 21 Q. Have you spoken with any lawyer about your testimony
09:13:38 22 today other than your own?

09:13:39 23 A. No.

09:13:39 24 Q. How about any lawyers for the state?

09:13:41 25 A. No.

09:13:42 1 Q. Okay. You received a subpoena to be here today; is
09:13:45 2 that true?

09:13:46 3 A. I was not served. I'm here voluntarily.

09:13:52 4 Q. Okay. I can tell you that I was served with a
09:13:56 5 subpoena that was directed towards you, but it sounds like your
09:13:59 6 testimony is you've never seen that; is that a fact?

09:14:02 7 A. It seems like either you or the state sent me a copy
09:14:07 8 of the subpoena or something like that, but I didn't sign
09:14:11 9 anything, and I simply told them I would be here voluntarily,
09:14:17 10 just give me a time and place.

09:14:19 11 Q. Okay. I can represent to you I've never sent you
09:14:22 12 anything.

09:14:22 13 A. No.

09:14:23 14 Q. Okay. I'm not trying to trick you about the subpoena.
09:14:26 15 The reasons I bring up the subpoena is it also had a request in
09:14:29 16 there that you bring some documents. Do you recall that?

09:14:31 17 A. Yes.

09:14:32 18 Q. I noticed that the state asked you today about an
09:14:35 19 email that was -- it looks like it was forwarded from you to
09:14:40 20 Mr. Opiela. I can find it here in the record.

09:14:43 21 A. Yes, I recall that.

09:14:44 22 Q. Do you know how the state would've come in possession
09:14:46 23 of that?

09:14:47 24 A. I assume Mr. Opiela gave them to you. They were the
09:14:51 25 only things that I had that were responsive to a subpoena. I

09:14:55 1 sent them to Mr. Opiela immediately.

09:14:58 2 Q. Well, I haven't received any of your documents, yet.

09:15:00 3 And again I'm not fussing about it. I just want to make sure I
09:15:02 4 understand what they are.

09:15:03 5 A. Okay.

09:15:04 6 Q. So the subpoena asked you to bring the documents
09:15:07 7 today. Are you saying there's none other than that email that
09:15:11 8 was discussed?

09:15:12 9 A. There was one other document, I think.

09:15:17 10 MR. OPIELA: Just to help, Chad, I sent them to the
09:15:22 11 state.

09:15:24 12 MR. DUNN: Okay.

09:15:26 13 MR. OPIELA: And I didn't know you were going to be
09:15:27 14 here today, so otherwise I would have sent them to you, but I'd
09:15:27 15 be happy to forward them to you, if you want to take a break and
09:15:31 16 do that.

09:15:31 17 MR. DUNN: In all honesty, I'm not fussing. I do want
09:15:35 18 to see them, so...

09:15:36 19 THE WITNESS: I'm sorry. I just thought that with my
09:15:39 20 counsel that it was done.

09:15:44 21 MR. OPIELA: If you want to take a break --

09:15:48 22 MR. DUNN: Let's go ahead and do that then, yes.

09:15:48 23 MR. OPIELA: I can do that, because I want you to
09:15:48 24 be...

09:15:48 25 MR. DUNN: Sure.

09:15:52 1 THE VIDEOGRAPHER: We are off the record. The time is
09:15:54 2 11:27 a.m.

09:15:54 3 THE VIDEOGRAPHER: We are back on the record. The
09:16:12 4 time is 11:31 a.m.

09:16:12 5 BY MR. DUNN:

09:16:12 6 Q. Okay. Senator during the break, we looked at some of
09:16:13 7 the documents that you produced through counsel; is that true?

09:16:13 8 A. Yes.

09:16:14 9 MR. DUNN: And Mr. Opiela, you've looked at the
09:16:17 10 subpoena. Can you tell us what document -- what requests you
09:16:20 11 had documents responsive to and what you didn't?

09:16:23 12 MR. OPIELA: So Senator Seliger had document -- items
09:16:27 13 responsive to request 1 and 4. There were no documents in his
09:16:31 14 possession responsive to request 2 and 3.

09:16:34 15 MR. DUNN: Okay.

09:16:34 16 BY MR. DUNN:

09:16:34 17 Q. In -- just, you know, in the interest of clarity, you
09:16:36 18 ultimately produced four documents; is that right?

09:16:38 19 A. I believe that's correct, yes.

09:16:39 20 Q. Two of them were emails related to your declaration.
09:16:43 21 There is the Word document of your declaration and then there's
09:16:46 22 the PDF signed version of your declaration; is that right?

09:16:49 23 A. Yes.

09:16:49 24 Q. And that's everything you produced?

09:16:51 25 A. Yes.

09:16:51 1 Q. Okay. You've looked for anything else in the subpoena
09:16:53 2 and you have nothing else responsive?

09:16:55 3 A. No.

09:16:56 4 Q. Okay. Now, I just want to take a step back for a
09:17:01 5 minute because, you know, the Court may ultimately watch this
09:17:04 6 video to get your testimony, so just a little bit about
09:17:07 7 yourself, okay, where you grew up, where you're from?

09:17:10 8 A. Yeah, I grew up in the town of Borger, Texas, and for
09:17:16 9 the last -- oh, lots of years -- 40-something-odd years, I lived
09:17:22 10 in Amarillo, Texas, where one time I was city councilman, then
09:17:27 11 mayor, and I've been a member of the State Senate since 2004.

09:17:30 12 Q. How long have you been in public service?

09:17:31 13 A. Since 1989, when I was first elected to city council.

09:17:35 14 Q. Have you ever lost an election contest?

09:17:38 15 A. No.

09:17:39 16 Q. Now you mentioned earlier in your testimony that you'd
09:17:41 17 done some other, you know, business work, and I think you said
09:17:46 18 steel erection fabrication?

09:17:47 19 A. No, not erection or fabrication. Basically a steel
09:17:50 20 service.

09:17:52 21 Q. But you sold that business now?

09:17:53 22 A. Yes.

09:17:54 23 Q. We also had a discussion while we were waiting at the
09:17:59 24 security stand about your plans next week. Do you recall that?

09:18:02 25 A. Yes.

09:18:03 1 Q. It's my understanding you're going to be in California
09:18:06 2 next week?

09:18:06 3 A. Correct.

09:18:07 4 Q. Have you had any discussion with anybody about your
09:18:12 5 testimony in this case? But earlier I asked you if you had any
09:18:14 6 discussion about your testimony today in the deposition. I'm
09:18:16 7 asking have you had any discussion with anybody about your
09:18:19 8 testimony --

09:18:19 9 A. No.

09:18:20 10 Q. -- related to this case?

09:18:21 11 A. No, no one.

09:18:22 12 Q. I just want to be clear in light of some of the
09:18:25 13 state's questioning. Has anybody tried to influence you in
09:18:29 14 terms of what your recollections were today?

09:18:32 15 A. Well, no, but Senator Powell did ask me to sign the
09:18:36 16 affidavit, but that's the only person I talked to about this
09:18:39 17 issue.

09:18:39 18 Q. When she asked you to sign the affidavit, did she get
09:18:42 19 into, you know, what you believe or what you think or what you
09:18:45 20 recall?

09:18:45 21 A. No.

09:18:45 22 Q. Did she try to plant any kind of seeds in your memory
09:18:52 23 about thoughts or events or facts that you might testify to?

09:18:54 24 A. No, I feel certain, right after the map came out, i
09:19:02 25 went over to her desk and expressed my sympathy for it, and we

09:19:10 1 talked about it briefly and what she thought it did, but that's
09:19:13 2 the only discussion I've had with anybody, just her.

09:19:17 3 Q. That was right there on the floor?

09:19:19 4 A. Yes.

09:19:19 5 Q. It passed?

09:19:21 6 A. Yes.

09:19:21 7 Q. Was she trying to influence your recollections then?

09:19:25 8 A. No.

09:19:25 9 Q. Was that conversation anything other than her
09:19:27 10 confiding in somebody in the Senate that she had confidence in?

09:19:32 11 A. No, that's all it was.

09:19:33 12 Q. So, other than that discussion immediately after the
09:19:38 13 vote, have you ever had any discussion with Senator Powell on
09:19:42 14 the merits of the redistricting plan, or her opinions or your
09:19:45 15 opinions, anything of that sort?

09:19:46 16 A. Not at all.

09:19:48 17 I'm sorry.

09:19:49 18 MR. OPIELA: We were getting close to this. You know,
09:19:51 19 I want to be consistent here and object to any privileged
09:19:56 20 conversation.

09:19:57 21 BY MR. DUNN:

09:19:58 22 Q. So if you have to, you know in the course of -- well,
09:20:00 23 just let me ask you this. You're familiar with legislative
09:20:04 24 privilege, I assume?

09:20:05 25 A. Yes.

09:20:05 1 Q. I know you're not a lawyer. I'm not trying to box you
09:20:08 2 into a lawyer position here, but you -- you know, you were in
09:20:11 3 the Senate Redistricting Committee back n 2011?

09:20:14 4 A. Yes.

09:20:15 5 Q. And you've given lots of testimony in various places
09:20:18 6 about redistricting. Would that be fair to say?

09:20:20 7 A. Yes.

09:20:21 8 Q. And in the course of that, you had opportunity to talk
09:20:24 9 about your legislative privilege and --

09:20:27 10 A. Yes.

09:20:27 11 Q. -- at least what you understand is the scope?

09:20:30 12 A. Yes.

09:20:30 13 Q. You realize that's your privilege?

09:20:33 14 A. Right.

09:20:33 15 Q. It's not somebody else's; is that true?

09:20:35 16 A. I think so.

09:20:35 17 Q. You can decide on your own whether you want to
09:20:39 18 disclose a conversation?

09:20:39 19 A. Right.

09:20:41 20 Q. Now in the past, you were represented by the Attorney
09:20:45 21 General's office?

09:20:45 22 A. Correct.

09:20:46 23 Q. In fact, some of the same lawyers in this case today
09:20:49 24 were your lawyers in the previous decade; is that not true?

09:20:54 25 A. It may be. I think you were still in high school,

09:20:59 1 so...

09:20:59 2 Q. Looking at Mr. Hudson, I think the main lawyer here is
09:21:03 3 Mr. Sweeten?

09:21:04 4 A. I think I recall him, yes.

09:21:06 5 Q. And I assume in the course of meeting with the lawyers
09:21:10 6 here at the Attorney General's office, they talked to you about,
09:21:13 7 you know, telling the truth and the importance of doing that in
09:21:16 8 the deposition; is that correct?

09:21:17 9 A. Yes.

09:21:17 10 Q. And they obviously talked to you about your
09:21:21 11 legislative privilege and what your rights are there?

09:21:24 12 A. Yes.

09:21:28 13 Q. I would like to take you through your declaration,
09:21:30 14 which you should have there in front of you.

09:21:34 15 A. I do.

09:21:35 16 Q. It's attached as Exhibit 1. Do you have that there?

09:21:48 17 A. I do and I have a copy I brought, too.

09:21:51 18 Q. Now this deliberation was signed by you?

09:21:55 19 A. Yes, sir.

09:21:55 20 Q. And on the last page of it, Page 3, that contains your
09:21:59 21 actual original signature?

09:22:00 22 A. It does.

09:22:00 23 Q. And it was signed on November the 17th; is that a
09:22:06 24 fact?

09:22:06 25 A. Correct.

09:22:06 1 Q. The -- you were given any opportunity you wanted to
09:22:09 2 make adjustments to this declaration; is that true?

09:22:11 3 A. Yes.

09:22:11 4 Q. It's not the case that, you know, this was jammed down
09:22:15 5 your throat and this is the language that you had to adopt?

09:22:17 6 A. Absolutely not.

09:22:18 7 Q. I assume you read it carefully?

09:22:21 8 A. Yes.

09:22:21 9 Q. And is there anything in it that you think is, you
09:22:24 10 know, worded incorrectly or slightly wrong or that you would
09:22:28 11 rephrase today?

09:22:30 12 A. I don't think so.

09:22:33 13 Q. Okay. I'd just like to walk through, you know, some
09:22:38 14 of the declaration. Go to page 1. It says you're over the age
09:22:44 15 of 18 and competent to testify. I assume that's true?

09:22:49 16 A. I hope so.

09:22:50 17 Q. Okay. And you have already testified you're the
09:22:54 18 incumbent Senator in Senate District 31 and elected to that
09:22:59 19 position in 2004; is that right?

09:23:01 20 A. Uh-huh. Yes.

09:23:01 21 Q. And you were the chair of the Senate Redistricting
09:23:04 22 Committee in 2012 and '13?

09:23:06 23 A. Yes.

09:23:07 24 Q. When you were the chair of those --

09:23:08 25 A. Let me clarify, please.

09:23:10 1 Q. Sure.

09:23:11 2 A. There was no Senate Select Committee on redistricting
09:23:14 3 in 2013, because we had no bill to consider, but that's when we
09:23:20 4 were in the middle of litigation so I was representing the
09:23:24 5 committee and Senate?

09:23:25 6 Q. Do you recall the Legislature in 2013 adopting a
09:23:28 7 remedy map for the Senate?

09:23:30 8 A. I don't recall that well.

09:23:32 9 Q. Okay. Do you recall the U.S. Federal Court passing or
09:23:38 10 issuing an opinion on the Senate District 10 part of the Senate
09:23:43 11 map? I think that decision came out in 2012 in paragraph 5 in
09:23:48 12 your declaration?

09:23:48 13 A. I did not remember that until I read paragraph 5.

09:23:48 14 Q. Okay.

09:23:52 15 A. And do not recall the substance of that decision.

09:23:55 16 Q. Do you recall back in 2012 being briefed on that
09:24:00 17 decision?

09:24:00 18 A. I'm sure I was, but I don't recall it.

09:24:03 19 Q. In paragraph 6, you say the members of the committee
09:24:05 20 received copies of the federal decision?

09:24:07 21 A. I can only speak for myself.

09:24:12 22 Q. Did you receive it?

09:24:13 23 A. To the best of my recollection, yes, but I don't
09:24:15 24 recall it.

09:24:15 25 Q. Is it fair to say you relied on the Attorney General's

09:24:19 1 office in interpreting that decision?

09:24:21 2 A. Yes.

09:24:22 3 Q. In 2013, it says then Attorney General Abbott advised
09:24:27 4 Senate Select Redistricting Committee that it was our duty to
09:24:30 5 correct the racially discrimination that the federal court had
09:24:35 6 found in Senate District 10.

09:24:36 7 Is that what you said, sir?

09:24:37 8 A. Yes.

09:24:37 9 Q. And is that what you recall?

09:24:38 10 A. Yes.

09:24:39 11 Q. The committee held a series of hearings and discussed
09:24:42 12 the federal court's ruling that the dismantling of Senate
09:24:48 13 District 10 was racist and discriminatory?

09:24:50 14 A. Yes.

09:24:50 15 Q. And you recall at least having those hearings in
09:24:53 16 response to the federal court's order?

09:24:55 17 A. I do.

09:24:55 18 Q. And you would have been the chair?

09:24:56 19 A. Yes.

09:24:57 20 Q. Okay. And the next sentence in your declaration says,
09:25:00 21 to remedy this racially discrimination, the committee adopted
09:25:04 22 Plan S172, which restored Senate District 10 to its benchmark
09:25:11 23 configuration?

09:25:12 24 Do you recall that?

09:25:12 25 A. I do.

09:25:13 1 Q. And that's your testimony?

09:25:14 2 A. Yes.

09:25:14 3 Q. Now, do you recall in 2011 that Senate District 10 was
09:25:18 4 not out of deviation?

09:25:20 5 A. I don't recall that, specifically.

09:25:22 6 Q. Do you know that to be the case today --

09:25:22 7 A. No.

09:25:26 8 Q. -- regarding the cycle of redistricting?

09:25:28 9 A. No, I don't know that.

09:25:29 10 Q. And ultimately you say the plan was passed by the
09:25:34 11 Legislature and signed by the Governor; is that right?

09:25:35 12 A. Yes.

09:25:36 13 Q. Is it fair to say then in 2013, you as Chairman of the
09:25:41 14 committee and the Senate and the rest of the legislature, passed
09:25:42 15 a remedy plan for Senate District 10 to address the federal
09:25:47 16 Courts's order that the district had been intentionally
09:25:51 17 dismantled in violation of the Voting Rights Act?

09:25:54 18 A. It was not done intentionally to do that. The Court
09:25:57 19 found that it did, but it was not intentional on our part.

09:26:01 20 Q. And I understand you testified for the state?

09:26:03 21 A. Yes.

09:26:03 22 Q. And you testified in San Antonio in that court; is
09:26:06 23 that true?

09:26:07 24 A. Yes.

09:26:07 25 Q. And you testified in Washington, D.C.?

09:26:09 1 A. I did.

09:26:10 2 Q. And there were three federal judges there as well,
09:26:13 3 right?

09:26:13 4 A. There were.

09:26:13 5 Q. And it was your opinion that it was not intentionally
09:26:18 6 discriminatory?

09:26:18 7 A. Absolutely.

09:26:19 8 Q. Now, ultimately, the Court found that?

09:26:22 9 A. Right.

09:26:22 10 Q. And then you accepted it; is that true?

09:26:25 11 A. Well, yeah. I --

09:26:26 12 Q. Okay. And so in response to it, you led the committee
09:26:31 13 in passing a plan that the court would approve?

09:26:34 14 A. Yes.

09:26:35 15 Q. Okay. You don't have any regret about that?

09:26:39 16 A. I'm sorry?

09:26:39 17 Q. You don't have any regret about that?

09:26:41 18 A. About drawing the first map?

09:26:44 19 Q. No. About drawing the remedy plan in response to the
09:26:47 20 court.

09:26:47 21 A. Oh, yeah, I regret that we had to, because I thought
09:26:51 22 we had drawn a good map, but the Court said we had to do it and
09:26:55 23 I am satisfied that we met the requirements of the court.

09:26:58 24 Q. And the Attorney General, at the time, told you that
09:27:01 25 you had to; is that right?

09:27:02 1 A. Yes.

09:27:02 2 Q. And the next paragraph, number 8, your declaration
09:27:05 3 says, the committee members all knew it was necessary to restore
09:27:09 4 Senate District 10 to its benchmark configuration in order to
09:27:13 5 comply with the Voting Rights Act and the U.S. Constitution,
09:27:16 6 which prohibits racially discrimination.

09:27:19 7 Is that your testimony?

09:27:19 8 A. Yes, it is.

09:27:20 9 Q. And is that what you recall the plan did in 2012,
09:27:24 10 restore?

09:27:24 11 A. Yes.

09:27:27 12 Q. And at the time of the drawing of the remedy map in
09:27:31 13 2013, can you recall -- you know, I don't want to put you
09:27:34 14 through a memory test, but what are the members of the committee
09:27:37 15 that you can recall, the other members? I know you may not get
09:27:41 16 them all, but what --

09:27:41 17 A. Oh, I won't get them all: Senator West, Senator
09:27:47 18 Zaffrini, Senator Frazer, Senator Wentworth; I don't know;
09:27:53 19 Senator Huffman. And I don't recall exactly who else was on it.

09:27:56 20 Q. And again fair enough. But Senator Huffman was the
09:28:00 21 chair of the committee in this most recent?

09:28:03 22 A. Yes.

09:28:03 23 Q. And as you just noted she was on the committee in
09:28:07 24 2013?

09:28:07 25 A. I believe that's right.

09:28:08 1 Q. I think it's also true she was on the committee in
09:28:11 2 2011. Does that sound --

09:28:13 3 A. I believe that's correct.

09:28:14 4 Q. Okay. So in terms of what you laid out here in these
09:28:17 5 prior paragraphs in your declaration and what the committee was
09:28:20 6 told by the Attorney General what the Federal Court decision
09:28:23 7 said, that information was shared with Senator Huffman and the
09:28:26 8 rest of the committee, would you agree?

09:28:30 9 A. Yes.

09:28:31 10 Q. Now you are familiar with redistricting with racially
09:28:33 11 polarized voting? I know you might not be an expert, but you've
09:28:36 12 heard that phrase?

09:28:36 13 A. I've certainly heard the phrase.

09:28:37 14 Q. You know it's an important issue that courts resolve
09:28:41 15 in voting rights cases?

09:28:43 16 A. Yes. Yes.

09:28:43 17 Q. Okay. And so you said here in paragraph 9, the
09:28:48 18 committee members also knew the voting in Texas in Tarrant
09:28:53 19 County is racially polarized?

09:28:55 20 A. Yes.

09:28:55 21 Q. That's something you -- I'm assuming it saw hours of
09:28:58 22 testimony on in the court proceedings?

09:29:00 23 A. As a witness, I cannot go -- could go in and see those
09:29:07 24 court proceedings, but, yeah, I believe that was subject -- that
09:29:10 25 was a big, big subject in there. Because we talked about it in

09:29:14 1 my depositions prior to those court proceedings.

09:29:17 2 Q. Okay.

09:29:17 3 A. Excuse me.

09:29:18 4 Q. Setting aside the litigation then, for a moment
09:29:22 5 though, when you were chair of the committee, were you briefed,
09:29:25 6 you know, whether in public or private, by experts on racially
09:29:31 7 polarized voted?

09:29:33 8 A. Yes.

09:29:33 9 UNKNOWN SPEAKER: Yeah, I was going to -- well, yeah,
09:29:36 10 go ahead.

09:29:37 11 BY MR. DUNN:

09:29:37 12 Q. Were those public briefings, private or both?

09:29:41 13 A. Those were private briefings and all with counsel.

09:29:47 14 Q. Okay. And the counsel you were referring to there is
09:29:51 15 the Attorney General's office?

09:29:52 16 A. Both the Attorney General's office and Professors Gwen
09:29:55 17 and Morrison of Baylor University.

09:29:58 18 Q. Those are professors that the state had hired to help
09:30:01 19 the committee?

09:30:02 20 A. Correct.

09:30:02 21 Q. But had you also received advice on racially polarized
09:30:08 22 voting from the Attorney General's office?

09:30:08 23 MR. OPIELA: So I'm going to object on --

09:30:14 24 MR. HUDSON: Object on by privilege. Object --

09:30:14 25 MR. DUNN: Our position is that since it's the

09:30:15 1 Attorney's General's office is cross-examining their former
09:30:17 2 client that we're entitled to any of that discussion.

09:30:22 3 MR. HUDSON: Well, our position is we are instructing
09:30:25 4 not to answer and we don't think that you're waiving privilege
09:30:29 5 by testifying today, so to the extent that they're encroaching
09:30:33 6 on attorney-client privilege or attorney work product, the
09:30:38 7 Attorney General's position is you should not answer that
09:30:41 8 question.

09:30:41 9 THE WITNESS: Okay.

09:30:41 10 MR. OPIELA: I don't have any objection to that. It's
09:30:44 11 your privilege to waive or not, so...

09:30:46 12 THE WITNESS: I'm not going to waive.

09:30:48 13 BY MR. DUNN:

09:30:48 14 Q. So you're going to take the direction of the Attorney
09:30:51 15 General's office to not answer questions about any advice or
09:30:52 16 discussions they had with you?

09:30:52 17 A. I have to this point, but it's no commitment to future
09:30:56 18 input.

09:30:57 19 Q. I understand. If you don't mind, let me finish my
09:31:01 20 question, so we have a record.

09:31:03 21 A. Okay.

09:31:03 22 Q. So you're going to take the Attorney General's office
09:31:06 23 direction and not answer any questions about the communications
09:31:10 24 you had or advice you received from the Attorney General's
09:31:13 25 office in 2011 and the '13 litigation; is that right?

09:31:16 1 A. Depending upon the advice of my counsel.

09:31:19 2 Q. As your attorney noted today, it's your privilege to
09:31:22 3 decide whether you want to invoke or not, and I'm really not
09:31:26 4 trying to be difficult with you, but...

09:31:28 5 MR. HUDSON: Well, I'm going to object to that line of
09:31:31 6 questioning. You've suggested to the witness a few times that
09:31:34 7 he has the ability to waive the privilege. It's getting awfully
09:31:39 8 close to suggesting that he should. And his attorney for
09:31:41 9 purposes of 2011 or 2013 was the Attorney General's office, not
09:31:45 10 Eric Opiela, and so to the extent you're trying to encroach on
09:31:49 11 attorney-client privilege and attorney work product from prior
09:31:52 12 cases, Mr. Opiela is not here today to advise him. And so I
09:31:56 13 would ask that you please stop suggesting to the witness that,
09:32:00 14 you know, he can -- implying that he should waive his privilege
09:32:02 15 to attorney-client privilege and attorney-client work product.

09:32:06 16 BY MR. DUNN:

09:32:07 17 Q. All right. All I'm trying to establish is you're
09:32:09 18 going to take Mr. Hudson's direction and not answer any
09:32:11 19 questions about your communications with the Attorney General's
09:32:13 20 office during the 2011, 2013 litigation about redistricting?

09:32:17 21 A. Yes, I am, unless otherwise advised by my attorney.

09:32:21 22 Q. Okay. Now, in terms of going back to the racially
09:32:28 23 polarized voting --

09:32:28 24 A. Um-hum.

09:32:29 25 Q. -- so, tell us -- you know, and I understand you're

09:32:32 1 not an expert in it, but tell us what your kind of understanding
09:32:39 2 of racially polarized voting is?

09:32:41 3 MR. HUDSON: I am going to object based on
09:32:41 4 attorney-client privilege, attorney work product.

09:32:43 5 You can't answer that question without encroaching on
09:32:47 6 those other privileges from prior instruction in prior cases.
09:32:50 7 You're free to answer, but if you can't, I'm instructing you not
09:32:52 8 to answer.

09:32:53 9 THE WITNESS: I can't. I can't really define it.
09:32:55 10 It's just been a long time.

09:32:57 11 BY MR. DUNN:

09:32:57 12 Q. Sure. No. Fair enough.

09:32:59 13 So I'll represent to you that racially polarized
09:33:02 14 voting typically is offered as evidence to show that certain
09:33:07 15 racial groups prefer one type of candidate and other racial
09:33:11 16 groups prefer other types of candidates?

09:33:11 17 A. Right.

09:33:13 18 Q. And it relies on election data to reach these
09:33:15 19 conclusions. There are appropriate experts that testify about
09:33:18 20 that. You're aware of all of that, generally?

09:33:20 21 A. Yes.

09:33:21 22 Q. And that's testimony or evidence that you've seen over
09:33:23 23 the course of your career on the redistricting committee. I
09:33:26 24 mean, would you have ever seen a racially polarized voting
09:33:32 25 analysis?

09:33:33 1 A. Oh, I'm sure I've seen analysis at some point.

09:33:37 2 MR. OPIELA: Go ahead.

09:33:39 3 BY MR. DUNN:

09:33:39 4 Q. And so that's ultimately how you know that in Tarrant
09:33:43 5 County that voting is racially polarized as you say in paragraph
09:33:43 6 nine in your declaration?

09:33:45 7 A. Um-hum.

09:33:45 8 Q. Is that a yes?

09:33:46 9 A. Yeah, it's yes. That was the decision of the court.
09:33:49 10 I don't concede it.

09:33:50 11 Q. Oh, I see. Okay.

09:33:52 12 But that's what the court told in its opinion and
09:33:54 13 that's what was shared to you and the rest of the committee
09:33:57 14 members?

09:33:57 15 A. Right.

09:33:58 16 Q. Okay. Now, you were asked quite a few questions from
09:34:02 17 Mr. Hudson on paragraph 10, and there you say the 2021 Senate
09:34:09 18 redistricting process saw untrue, pretextual explanations given
09:34:14 19 for why the lines were drawn the way they were.

09:34:17 20 Do you see that?

09:34:17 21 A. Yes.

09:34:18 22 Q. And you gave some comments on the Senate floor about
09:34:21 23 the map around the vote?

09:34:22 24 A. I did.

09:34:22 25 Q. And that information, of course, is available to

09:34:26 1 anyone to get a sense of what you thought about the plan; is
09:34:30 2 that true?

09:34:30 3 A. Yes.

09:34:30 4 Q. I'm not asking you -- I know you don't have it
09:34:33 5 memorized, but what are some of the comments you made on the
09:34:39 6 floor?

09:34:40 7 A. That the assertion --

09:34:42 8 MR. OPIELA: Go ahead.

09:34:45 9 A. That the assertion that was done to sort of
09:34:46 10 concentration of A. G. in District 31 -- in District 28, in oil
09:34:52 11 and gas in District 31, that those arguments were specious and
09:34:59 12 untrue and I thought it was contrived.

09:35:03 13 BY MR. DUNN:

09:35:03 14 Q. You said that then?

09:35:04 15 A. Yeah.

09:35:05 16 Q. And so in that sense, what you have said today on that
09:35:10 17 subject is consistent with what you said then?

09:35:12 18 A. Yes. Malicious --

09:35:13 19 Q. Okay. Have you had --

09:35:15 20 A. And malicious.

09:35:17 21 Q. Do you -- what makes you believe it was malicious?

09:35:20 22 A. I think because the strained relationship with
09:35:23 23 Lieutenant Governor and Senator Huffman.

09:35:26 24 Q. Was the -- you were asked a number of, you know,
09:35:30 25 questions today about your, you know, relationship with the

09:35:33 1 Republican Party and support and things of that. Do you recall
09:35:35 2 that generally?

09:35:36 3 A. Yes.

09:35:36 4 Q. Now did you view what was done to your district as a
09:35:40 5 punishment?

09:35:45 6 THE WITNESS: Whenever you clear your throat or
09:35:47 7 something, I think you're going to say something.

09:35:49 8 MR. OPIELA: No, no. I'm trying to process what he
09:35:52 9 was asking and what he was saying.

09:35:52 10 A. Was it punishment, so much as it was designed to be
09:36:01 11 adverse to me, more that way.

09:36:01 12 BY MR. DUNN:

09:35:58 13 Q. Is that the -- I mean as somebody that's been in the
09:36:02 14 Senate all these years, is that the sense of how things
09:36:05 15 sometimes go, you fall out of line with leadership and there's a
09:36:08 16 reaction?

09:36:09 17 A. Absolutely.

09:36:10 18 Q. You know you were asked a number of questions about
09:36:13 19 how you vote and did you vote, you know, conservatively enough,
09:36:19 20 do you recall those questions?

09:36:19 21 A. Yes.

09:36:20 22 Q. Was that -- was it your experience that when you
09:36:22 23 didn't vote with the priorities with the Lieutenant Governor
09:36:26 24 there was a reaction and it was swift?

09:36:30 25 A. I don't know what you call swift. Was it -- was it

09:36:33 1 profound and vindictive, yes, it was.

09:36:36 2 Q. Would that have been true in terms of voting against a
09:36:40 3 redistricting bill?

09:36:42 4 A. There's not much else that the Lieutenant Governor can
09:36:45 5 take from me, sole not necessarily. So that's just the answer.

09:36:54 6 Q. I understand, but in terms of the other members of the
09:36:57 7 Senate, who still had their committee assignments and the other
09:37:01 8 things that, you know, that the other kind of assignments that a
09:37:05 9 senator usually receives, based on your experience, is it
09:37:10 10 reasonable to believe that voting against the redistricting bill
09:37:13 11 might concern another member of them losing some of their
09:37:17 12 emoluments of office?

09:37:17 13 A. No question.

09:37:17 14 MR. HUDSON: Objection --

09:37:24 15 DEPOSITION COURT REPORTER: Hold on just a second.

09:37:24 16 MR. HUDSON: Objection form.

09:37:26 17 DEPOSITION COURT REPORTER: "Another member of
09:37:26 18 those..."? I didn't hear it.

09:37:26 19 MR. DUNN: Another member of the Senate might be
09:37:29 20 concerned that voting against the redistricting bill would cost
09:37:29 21 them an emolument in office?

09:37:32 22 UNKNOWN SPEAKER: And I'll object to form on that one
09:37:34 23 as well.

09:37:34 24 THE WITNESS: Just form --

09:37:37 25 MR. OPIELA: Yeah. No, you have to answer it.

09:37:38 1 THE WITNESS: -- because in truth, yes, it did happen,
09:37:39 2 and the 87th District just passed.

09:37:42 3 Senator Hancock on the bills having to do with
09:37:49 4 electrical grid -- Senator Hancock did a lot of research and
09:37:54 5 work on the issue, and the lieutenant governor, whoever was the
09:37:56 6 lieutenant governor, I assume Senator Schwertner, but I don't
09:38:02 7 know that -- did a lot of work on the other thing and they had
09:38:02 8 bills that were substantially different. When Senator Hancock
09:38:07 9 -- so this transpired on the floor, so I can -- when Senator
09:38:12 10 Hancock voted in favor of his work product, and it should be
09:38:20 11 noted that I voted against Senator Hancock's position and with
09:38:25 12 the lieutenant governor's, he was summarily discharged as the
09:38:29 13 Chairman of the Business and Commerce Committee and I think
09:38:33 14 taken off the committee altogether. So, yeah, vote against
09:38:37 15 leadership and it's going to be swift and sure.

09:38:42 16 BY MR. DUNN:

09:38:42 17 Q. So we've had an objection, so I have to go back and
09:38:45 18 ask questions again without objections, so let me ask you this.

09:38:48 19 What examples do you recall of other Senators being
09:38:53 20 punished by leadership for not voting for a particular measure?

09:38:59 21 A. In 20 -- I forget the year, but it was the year the
09:39:02 22 measure was before the caucus of the Senate to take our
09:39:08 23 threshold from 21 votes to 19 votes required to bring the
09:39:12 24 measure to the floor after it came out of committee. One
09:39:16 25 Republican voted against -- and this is a rules change, not a

09:39:20 1 piece of legislation -- Craig Estes of Wichita Falls voted
09:39:28 2 against that rules change, and his next session was taken off as
09:39:32 3 chairman, I think on the agriculture committee, and was taken
09:39:37 4 off the finance committee.

09:39:39 5 Q. Do you recall any other examples?

09:39:41 6 A. No.

09:39:41 7 Q. Other than your own?

09:39:42 8 A. My own.

09:39:43 9 Q. And so was it your impression if you don't vote for
09:39:47 10 the leadership's redistricting bill, that there would have been
09:39:51 11 reaction?

09:39:52 12 A. It's an absolute conviction, but like I said, there's
09:39:55 13 not much more they can take from me.

09:39:57 14 Q. Right.

09:39:57 15 There were other things that other Republican members
09:40:00 16 could've take from them at that time?

09:40:01 17 A. Chairmanships and I was the senior Republican without
09:40:04 18 a chair.

09:40:05 19 Q. All the other senators, of course, saw the treatment
09:40:08 20 that you had suffered?

09:40:10 21 A. Yes.

09:40:10 22 Q. They had seen, those that had been there, saw Senator
09:40:15 23 Estes's treatment after his vote; is that right?

09:40:17 24 A. Yes.

09:40:17 25 Q. Do you think observing that had a reaction in the

09:40:20 1 chamber in terms of how --

09:40:22 2 MR. HUDSON: Objection form. Objection form.

09:40:27 3 THE WITNESS: Yes, I do. And I'm told there's a term
09:40:29 4 that goes around the Republican Caucus of being Seligered and
09:40:35 5 that's when the recriminations come.

09:40:37 6 BY MR. DUNN:

09:40:37 7 Q. Since there's an objection, I'm going to ask you a
09:40:38 8 different way.

09:40:39 9 What is being Seligered?

09:40:45 10 A. Not voting for you ship and losing chairmanship or
09:40:45 11 other committee assignments.

09:40:46 12 Q. Have you heard that used by others?

09:40:48 13 A. Yeah, I have been told.

09:40:50 14 UNKNOWN SPEAKER: Objection as to any non-public
09:40:53 15 communications.

09:40:54 16 THE WITNESS: Yeah, it's a non-public communication.

09:40:54 17 BY MR. DUNN:

09:40:57 18 Q. I see.

09:40:58 19 How would you describe the term of being Seligered?

09:41:06 20 A. Voting against lieutenant governor's position and
09:41:09 21 losing a chairmanship or other committee assignments.

09:41:12 22 Q. And the other example you can think of that is the
09:41:15 23 Senator Estes's you described earlier?

09:41:16 24 A. Senator Estes and the example of Senator Hancock.

09:41:20 25 Q. And what was the example of Senator Hancock?

09:41:23 1 A. Senator Hancock, almost in the middle of the session,
09:41:26 2 lost his chairmanship of a business and commerce committee, in
09:41:30 3 which he was doing a very nice job, and I think that he was
09:41:34 4 taken off the business and commerce committee altogether. It's
09:41:37 5 a very important committee. It's an important chairmanship.
09:41:41 6 And just right in session taken off.

09:41:43 7 Q. Was it your opinion as a member you didn't have the
09:41:46 8 freedom to vote your conscience?

09:41:50 9 MR. OPIELA: And I'm going to object as to the
09:41:53 10 contemplations that he has when he's voting on bills under
09:41:57 11 legislative privilege.

09:42:00 12 MR. DUNN: Are you instructing him not to answer?

09:42:02 13 MR. OPIELA: I am.

09:42:04 14 THE WITNESS: Okay.

09:42:04 15 BY MR. DUNN:

09:42:05 16 Q. Did you feel free to vote your conscience as a
09:42:09 17 Senator?

09:42:10 18 MR. OPIELA: And I'll restore that objection as well.

09:42:14 19 MR. DUNN: And again instruct him not to answer.

09:42:14 20 MR. OPIELA: And instruct him not to answer, because
09:42:17 21 it's going to the substance of his decision making while he's in
09:42:23 22 legislature.

09:42:24 23 BY MR. DUNN:

09:42:24 24 Q. Are there any other sort of reactions that you have
09:42:27 25 observed that leadership has had when it's been dissatisfied

09:42:32 1 with a member's vote?

09:42:33 2 A. Not just offhand.

09:42:33 3 Q. Okay.

09:42:36 4 A. Because the reaction is pretty swift and sure, it's
09:42:39 5 unmistakable.

09:42:41 6 Q. Now returning back to declaration in paragraph 10 --

09:42:41 7 A. Uh-huh.

09:42:44 8 Q. -- is it fair to say that paragraph 10 largely
09:42:49 9 summarizes the comments that you made on the floor during the
09:42:52 10 debate?

09:42:53 11 A. I think so.

09:42:54 12 Q. And you said in the next sentence, for example, I was
09:42:58 13 told by Senator Huffman that my district was being changed,
09:43:00 14 adding many new counties around Midland and were removed
09:43:04 15 Panhandle counties in order to create distinctive agricultural
09:43:09 16 versus oil and gas districts between SD-31 and SD-28; is that
09:43:16 17 your testimony?

09:43:17 18 A. That is.

09:43:17 19 Q. And I'm reading that way so it's easier for her to
09:43:21 20 take it down.

09:43:22 21 A. Okay.

09:43:23 22 Q. Now, you were -- you had started to say a bit during
09:43:27 23 Mr. Hudson's question, you know, explaining that, but can you
09:43:31 24 explain what you meant by the agriculture versus oil and gas
09:43:34 25 districts and what you understood of Senator Huffman's

09:43:37 1 explanation and what you thought was incorrect about it?

09:43:39 2 A. Senate District 28 has tremendous concentration of
09:43:44 3 agriculture primarily built around the cotton industry around
09:43:47 4 Lubbock. There's also a good deal of oil and gas inside Senate
09:43:54 5 District 28, because it goes way down south. At the same time,
09:44:01 6 the district, District 31, the one that I represent, has a
09:44:06 7 tremendous amount of agriculture, both beef and corn, and
09:44:15 8 peanuts and all of those things. It's very agriculture. It
09:44:20 9 happens to be a diversified economy. And -- is there a lot of
09:44:26 10 oil and gas? Yeah, most of the oil and gas in the State of
09:44:31 11 Texas, probably, is in -- in -- well, the Permian Basin, but a
09:44:34 12 lot in the Panhandle. Does that mean that oil and gas is not
09:44:38 13 important to Senate District 28? Absolutely not. The assertion
09:44:41 14 was specious and untrue and it's just the best that she could
09:44:45 15 do.

09:44:45 16 Q. And you said that at the time?

09:44:47 17 A. Yes.

09:44:47 18 Q. Why do you think, if you have an opinion, as to she
09:44:51 19 was giving you a specious answer?

09:44:52 20 A. To try to take those four counties in the Panhandle,
09:44:57 21 those being Gray, Wheeler, Donley, and Collingsworth, out of the
09:45:07 22 district and adding counties that go almost all of the way to
09:45:11 23 the border, like Schleicher and Upton and Reagan. Good
09:45:16 24 counties. I have no objection representing them, because
09:45:19 25 clearly I was going to have to represent more than the 37

09:45:22 1 counties, but it was designed to concentrate the vote to the
09:45:28 2 degree possible in the area close to Midland to help Mr. Sparks.

09:45:33 3 Q. Is that where Mr. Sparks is from?

09:45:35 4 A. Yes.

09:45:35 5 Q. Why not just tell you that?

09:45:37 6 A. I don't know, because everybody insists they're
09:45:44 7 innocent of any suspect motive.

09:45:47 8 Q. Now I don't want -- I know that your lawyers are going
09:45:50 9 to instruct you not to answer, so I'm going to try to ask this
09:45:54 10 carefully.

09:45:54 11 A. Okay.

09:45:55 12 Q. Have you had any private conversations with Senator
09:46:00 13 Huffman about her motivation for your part of the plan?

09:46:02 14 MR. OPIELA: Yeah, and you're just going to have to
09:46:05 15 ask the question another way. I'm going to object again.

09:46:06 16 MR. DUNN: I want to know if the conversation existed,
09:46:06 17 not what she said --

09:46:09 18 MR. OPIELA: Correct.

09:46:10 19 MR. DUNN: -- under your objection. I'm just asking
09:46:10 20 whether the conversation happened. The Court needs to know that
09:46:14 21 so he can rule on the issue. If it didn't happen, we're going
09:46:18 22 to spin our wheels.

09:46:19 23 MR. OPIELA: Okay.

09:46:19 24 THE WITNESS: I don't mind answering, if in your
09:46:22 25 opinion it does nothing to compromise privilege.

09:46:26 1 MR. OPIELA: So, can we take a little break here?

09:46:31 2 MR. DUNN: I'm happy to take a break.

09:46:37 3 VIDEOGRAPHER: We're off the record. The time is
09:46:41 4 12:20 p.m.

09:46:43 5 We're back on the record. The time is 12:16 p.m.

09:46:48 6 BY MR. DUNN:

09:46:48 7 Q. Okay. Senator, before the break I had asked you -- I
09:46:51 8 don't want to know the context of the discussion or what was
09:46:55 9 said, but was there any discussions between you and Senator
09:46:59 10 Huffman, about -- private discussions, about the motivation
09:47:01 11 behind the Senate map?

09:47:04 12 A. No. I did have a conversation with her. It didn't
09:47:08 13 get into motivation.

09:47:09 14 Q. Was the conversation about the Senate map?

09:47:12 15 A. Yes.

09:47:12 16 Q. Okay. Have you at any point had conversation with the
09:47:15 17 Lieutenant Governor about the Senate map and how it crafted?

09:47:19 18 A. No.

09:47:19 19 Q. Public or private?

09:47:21 20 A. Public or private.

09:47:22 21 Q. All right. The discussion you did have with Senator
09:47:28 22 Huffman was in advance of the vote or after it?

09:47:28 23 A. In advance.

09:47:28 24 UNKNOWN SPEAKER: (Inaudible objection).

09:47:28 25 BY MR. DUNN:

09:47:36 1 Q. Again, I don't want to know the context or I mean I
09:47:38 2 do, but ultimately the Court will decide whether you testify
09:47:41 3 about it, but -- so don't tell us the substance now, but
09:47:45 4 whatever you were told in substance, did it inform your opinions
09:47:48 5 whether you were voting for the bill or not?

09:47:51 6 UNKNOWN SPEAKER: I'm going to object to that one,
09:47:53 7 because that one's going to go -- it's going under legislative
09:47:58 8 privilege.

09:47:58 9 THE WITNESS: Okay.

09:47:59 10 BY MR. DUNN:

09:47:59 11 Q. All right. So, did you have any -- other discussions
09:48:02 12 with, you know, what I would call, I guess, senate leadership
09:48:06 13 about his senate district map in private?

09:48:09 14 MR. HUDSON: Objection form.

09:48:10 15 MR. OPIELA: I'm confused. What's the question?

09:48:14 16 MR. DUNN: All right. I'll rephrase it. Sure.

09:48:14 17 BY MR. DUNN:

09:48:15 18 Q. What other members of the Senate did you have private
09:48:17 19 conversations about the Senate District map?

09:48:19 20 A. I can't remember.

09:48:19 21 Q. Okay.

09:48:20 22 A. But there were probably a few discussions like that.

09:48:23 23 Q. But none others that you recall?

09:48:25 24 A. No.

09:48:25 25 Q. Okay. All right. Now going back to your declaration

09:48:30 1 in paragraph 11, you say -- well, actually let me ask you just a
09:48:35 2 little bit more about 10.

09:48:37 3 A. Okay.

09:48:37 4 Q. The final thing you say here is instead it was obvious
09:48:41 5 that the purpose of these changes was to benefit a potential
09:48:44 6 Republican primary challenger from Midland preferred by the
09:48:47 7 Lieutenant Governor.

09:48:48 8 How did you know about this Republican primary
09:48:52 9 challenger? Had -- I mean -- I don't know (mumbling) -- so was
09:48:53 10 it in the newspaper?

09:48:54 11 A. He had already filed.

09:48:55 12 Q. I see. Okay. Have you ever had any contact with the
09:49:00 13 challenger at all?

09:49:02 14 A. Oh, yes, because I represent Midland over the years
09:49:07 15 of, not an substantial amount.

09:49:09 16 Q. And what was his name?

09:49:11 17 A. Kevin Sparks.

09:49:12 18 Q. Now, what gave the sense that Mr. Sparks was you,
09:49:16 19 know, talking to the Lieutenant Governor or Senator Huffman?

09:49:21 20 UNKNOWN SPEAKER: Objection form.

09:49:26 21 A. I don't know that he had.

09:49:26 22 Q. Okay. Well, let me ask you this.

09:49:29 23 Earlier, when Mr. Hudson was asking you questions,
09:49:29 24 you -- you said that you thought Lieutenant Governor had told
09:49:32 25 Senator Huffman to get rid of my district, is what I wrote down.

09:49:35 1 Do you recall that testimony?

09:49:35 2 A. I didn't say get rid of my district, but do i think
09:49:39 3 Lieutenant governor played a role? Absolutely, I do.

09:49:42 4 Q. Okay. And what makes you think that?

09:49:44 5 A. I think he was intimately involved in the whole
09:49:48 6 process. I think the Trump endorsement, essentially, was
09:49:53 7 requested of the former President by Lieutenant Governor.

09:49:57 8 Donald Trump doesn't sit around and worry a lot about
09:50:01 9 local elected officials in west Texas.

09:50:04 10 Q. Did you -- so have you -- do you have any information
09:50:19 11 that Mr. Sparks had direct contact with Senator Huffman?

09:50:23 12 A. No.

09:50:24 13 Q. Do you know whether he had any direct contact with
09:50:27 14 Lieutenant Governor or Lieutenant Governor's staff?

09:50:32 15 A. No. I suspect that he did.

09:50:36 16 Q. Now, going to paragraph 11 of the declaration.

09:50:36 17 A. Okay.

09:50:41 18 Q. You say, given my experience on the Senate the
09:50:43 19 Redistricting Committee in 2011 and 2013, the Federal Court's
09:50:47 20 order regarding Senate District 10, the fact that the benchmark
09:50:52 21 district was compact, wholly contained within Tarrant County,
09:50:56 22 and had close to ideal population, I cannot accept the
09:50:59 23 suggestion that any of the state of redistricting criteria, such
09:51:04 24 as equalizing population, compactness, communities and interests
09:51:10 25 or incumbent protection, compelled the substantial change to

09:51:14 1 Senate District 10's boundaries.

09:51:16 2 Is that what your testimony is?

09:51:17 3 A. Yes.

09:51:18 4 Q. And you say I believe this explanation is pretext?

09:51:21 5 A. Yes.

09:51:21 6 Q. And so with regards to paragraph 10 and 11, you have
09:51:27 7 provided testimony today about two examples that you think the
09:51:31 8 public explanation that Senator Huffman gave for the Senate map
09:51:36 9 were pretext at least with respect to two districts?

09:51:40 10 A. Yes.

09:51:41 11 Q. Now, you testified -- at this point just sitting here
09:51:50 12 today, I don't want to get into subjects outside of our
09:51:54 13 stipulation. Everybody has agreed we're going to talk today
09:51:55 14 about matters relative to the preliminary injunction.

09:51:55 15 A. Okay.

09:51:59 16 Q. But I just want to make sure, in response to questions
09:52:01 17 by Mr. Hudson, that there's an understanding what your
09:52:05 18 recollection is.

09:52:06 19 So at this point you have not examined whether there
09:52:08 20 are untrue reasons offered for other districts in the Senate
09:52:13 21 plan?

09:52:13 22 A. No.

09:52:13 23 Q. Okay. And you're not testifying today whether untrue
09:52:15 24 reasons were or were not offered for other districts in the
09:52:19 25 Senate plan?

09:52:19 1 A. I am not.

09:52:20 2 Q. Okay. Now, finally, in paragraph 12 of your
09:52:26 3 declaration, you said, I voted in favor of an amendment, offered
09:52:29 4 by Senator Powell, to restore Senate District 10 to its
09:52:33 5 benchmark configuration.

09:52:35 6 Do you see that, sir?

09:52:36 7 A. Yes.

09:52:37 8 Q. Is that your testimony?

09:52:37 9 A. (No response).

09:52:40 10 Q. Is that a yes?

09:52:40 11 A. Yes. I'm sorry.

09:52:41 12 Q. And you -- the record reflects that you voted for
09:52:44 13 Senator Powell's amendment?

09:52:45 14 A. I did.

09:52:46 15 Q. Do you recall, and again we're not getting into the
09:52:48 16 discussion, but do you recall having any discussion with Senator
09:52:51 17 Powell about her amendment before she offered it?

09:52:54 18 MR. OPIELA: And would you rephrase that to limit the
09:52:59 19 public conversation.

09:53:00 20 MR. DUNN: Okay. Well, I'm just asking the existence
09:53:04 21 of a private conversation.

09:53:05 22 MR. OPIELA: Okay.

09:53:05 23 BY MR. DUNN:

09:53:05 24 Q. Did you have a private conversation with Senator
09:53:07 25 Powell --

09:53:07 1 A. Yes.

09:53:08 2 Q. -- about her amendment before she offered it?

09:53:10 3 A. Yes.

09:53:11 4 Q. And I assume you'll invoke privilege?

09:53:14 5 A. I will.

09:53:15 6 Q. Do you have a public conversation with Senator Powell
09:53:17 7 over her amendment related to Senate District 10?

09:53:20 8 A. Help me with the distinction between the public and
09:53:23 9 private conversation.

09:53:25 10 When I went and talked to her on the floor.

09:53:27 11 Q. Yes.

09:53:27 12 A. Is that public or private?

09:53:29 13 Q. Well, that's between you and your lawyer, I think, to
09:53:31 14 advise.

09:53:32 15 MR. OPIELA: So, public is something that's part of
09:53:34 16 the public record.

09:53:35 17 A. It is not part of the public record. It was a private
09:53:39 18 conversation.

09:53:39 19 BY MR. DUNN:

09:53:39 20 Q. And did you have a public conversation with Senator
09:53:42 21 Powell, rather?

09:53:43 22 A. No.

09:53:43 23 Q. Okay. Why did you vote for her amendment?

09:53:46 24 MR. OPIELA: That's -- I'm going to object to that.
09:53:48 25 That goes directly to his -- well, legislative privilege.

09:53:53 1 BY MR. DUNN:

09:53:54 2 Q. Okay. So then returning to paragraph 12 of your
09:53:56 3 declaration, it says, having participated in the 2011 and 2013
09:54:00 4 Senate Select Redistricting Committee proceedings and having
09:54:04 5 read the prior federal court decision regarding Senate District
09:54:07 6 10, it was obvious to me that the renewed effort to dismantle
09:54:13 7 Senate District 10 violated the Vote Rights Act in the
09:54:17 8 Constitution.

09:54:18 9 And that's your testimony?

09:54:18 10 A. Yes, it is.

09:54:18 11 Q. And you're drawing that from your experience of having
09:54:22 12 been redistricting chair --

09:54:22 13 A. I do.

09:54:23 14 Q. -- in the prior cycle?

09:54:23 15 A. I do.

09:54:23 16 Q. -- and testifying and reading the court decisions?

09:54:26 17 A. Yes.

09:54:26 18 Q. Okay. Now, this declaration that we've gone through
09:54:32 19 here was provided to you, I think, from your documents in a Word
09:54:37 20 form; is that right?

09:54:37 21 A. Yeah.

09:54:38 22 Q. And did you provide it to your staff at any point,
09:54:41 23 your senate staff?

09:54:43 24 A. This declaration?

09:54:45 25 Q. Yes, sir.

09:54:46 1 A. My chief of staff might have read it, because she
09:54:49 2 reads almost everything that comes across my desk, but no one
09:54:52 3 else.

09:54:52 4 Q. Okay. I guess I'm curious and you may not remember,
09:54:55 5 but whether you shared the Word version with your staff before
09:54:58 6 you signed the declaration?

09:55:00 7 A. No. Other than her, but no.

09:55:04 8 Q. And you knew when you signed this was going to be
09:55:06 9 filed in the United States District Court?

09:55:08 10 A. Yes.

09:55:09 11 Q. And the that the judges and the lawyers were going to
09:55:11 12 rely on your testimony?

09:55:12 13 A. Yes.

09:55:14 14 Q. Did you take the time to be careful about it?

09:55:15 15 A. I read it, I thought fairly thoroughly.

09:55:19 16 Q. And if you had saw anything at all that you thought
09:55:21 17 was incorrect, you would've changed it or asked for it to be
09:55:25 18 changed?

09:55:25 19 A. I believe I would.

09:55:26 20 Q. Okay. All right. And you said something earlier
09:55:33 21 about the -- well, we've had a little bit of discussion about
09:55:37 22 the deviation in the map. And I am going to show you the map
09:55:43 23 that's been previously marked as Brooks' Preliminary Injunction
09:55:49 24 Exhibit 17.

09:55:51 25 MR. DUNN: I did give you a copy, Mr. Hudson. I

09:55:52 1 couldn't get it printed in color, but the color is not going to
09:55:55 2 matter for the question I'm going to ask. I'm going to use a
09:55:59 3 computer version, because we need to zoom in on the numbers.

09:55:59 4 THE WITNESS: Okay.

09:56:01 5 MR. DUNN: And my computer printing skills weren't
09:56:04 6 good enough to get the numbers, but...

09:56:04 7 MR. OPIELA: So just numbers wise or it would be 16 or
09:56:08 8 what are we...

09:56:08 9 MR. DUNN: I don't intend to, I mean, attach it. It's
09:56:11 10 Plaintiffs' Preliminary Injunction Exhibit 17. It's in the
09:56:15 11 court record.

09:56:17 12 MR. OPIELA: Okay. So, procedurally, how are we --
09:56:20 13 how are we giving the Court a record of what he is looking at.

09:56:24 14 MR. DUNN: So this is already filed before the Court.

09:56:27 15 MR. OPIELA: Okay.

09:56:28 16 MR. DUNN: It was filed with the preliminary
09:56:29 17 injunction motion --

09:56:30 18 MR. OPIELA: Okay.

09:56:30 19 MR. DUNN: -- and it's Exhibit 17.

09:56:30 20 MR. OPIELA: And that's what -- how your referencing
09:56:30 21 it.

09:56:34 22 MR. DUNN: I try not to --

09:56:34 23 MR. HUDSON: I'm looking over your shoulder so I can
09:56:39 24 actually see.

09:56:39 25 MR. OPIELA: Yeah.

09:56:39 1 MR. DUNN: Sure.

09:56:39 2 BY MR. DUNN:

09:56:40 3 Q. I have zoomed in to Tarrant County there?

09:56:40 4 A. Okay.

09:56:40 5 (Indiscernible conversation amongst counsel).

09:56:40 6 MR. DUNN: Just so you don't think I'm tricking you,
09:56:59 7 I'm going to zoom out so you see this whole thing.

09:56:59 8 UNKNOWN SPEAKER: Right.

09:56:59 9 BY MR. DUNN:

09:57:01 10 Q. This is the Texas Legislative Council developed a map
09:57:05 11 of the plan that passed -- of the benchmark plan, would you
09:57:10 12 agree?

09:57:10 13 A. Yes.

09:57:10 14 Q. Okay. Now, it has the various was districts and
09:57:12 15 shows the population and deviations; is that right?

09:57:13 16 A. Yes.

09:57:14 17 Q. And your district here that you've discussed is Senate
09:57:18 18 District 31. Do you see that?

09:57:18 19 A. Yes.

09:57:19 20 Q. It was underpopulated by seven-and-a-half percent?

09:57:22 21 A. Right.

09:57:22 22 Q. And to the south of your district, in the Panhandle,
09:57:25 23 is Senate District 28, which was under populated by
09:57:29 24 15.3 percent?

09:57:30 25 A. Right.

09:57:31 1 Q. Now going over to Tarrant County, the district Senator
09:57:35 2 Powell serves in, was underpopulated by .6 percent; is that
09:57:39 3 right?

09:57:39 4 A. Yes.

09:57:39 5 Q. So based on this, it didn't have to be, for at least
09:57:42 6 equalization purposes, any changes to Senate District 10?

09:57:46 7 MR. HUDSON: Objection, form.

09:57:53 8 A. That's my impression.

09:57:53 9 BY MR. DUNN:

09:57:53 10 Q. Now to the north of the Dallas-Fort Worth area, say
09:57:56 11 the northwest, there was Senate District 30 that was
09:57:58 12 overpopulated by 9.3 percent?

09:58:01 13 A. Right.

09:58:02 14 Q. So from your standpoint, and I guess just so you can
09:58:06 15 see it all, Senate District 14, which is to the south of Tarrant
09:58:10 16 County was underpopulated by 1.4 percent?

09:58:13 17 A. Do you mean 24.

09:58:15 18 Q. Oh, I'm sorry, 24.

09:58:16 19 A. Uh-huh.

09:58:17 20 Q. Was underpopulated by 1.4 percent; is that right?

09:58:20 21 A. Right.

09:58:20 22 Q. And then Senate District 22, the other one in the
09:58:23 23 region, was .4 percent over size; is that right?

09:58:27 24 A. Yes.

09:58:27 25 Q. All right. So from your standpoint, you know, if you

09:58:31 1 have an opinion, what was the logical way to deal with the
09:58:35 2 underpopulation of your district?

09:58:37 3 MR. HUDSON: Objection, form, calls for speculation;
09:58:40 4 objection, form, improper hypothetical; objection, form,
09:58:44 5 foundation; Senator Seliger is not being offered as an expert.

09:58:49 6 MR. OPIELA: You go ahead an answer.

09:58:52 7 THE WITNESS: Okay.

09:58:53 8 Ask me again.

09:58:53 9 MR. DUNN: Sure.

09:58:53 10 BY MR. DUNN:

09:58:54 11 Q. From your standpoint as the incumbent senator in
09:58:57 12 Senate District 31, what was the -- what was your preferred
09:59:03 13 method for balancing the population in your district?

09:59:06 14 MR. HUDSON: Same objections.

09:59:08 15 A. To add counties in that area not -- that are now in
09:59:12 16 District 28. Those were the only options. Adding things like
09:59:17 17 Clarendon County to the north.

09:59:19 18 THE COURT REPORTER: I'm sorry. What county?

09:59:21 19 A. Clare- -- well, Donley County, D-O-N-L-E-Y -- to the
09:59:24 20 north and some of the counties that were added by Senator
09:59:31 21 Huffman.

09:59:31 22 BY MR. DUNN:

09:59:31 23 Q. And can you recall some of those?

09:59:33 24 A. Yeah, Reaves, Crane, Winkler, Ward, because they're
09:59:54 25 all right by existing counties. They are contiguous with the

09:59:58 1 district.

09:59:58 2 Q. Okay. So when you take those out of Senate District
10:00:02 3 28, which is already also underpopulated, and I assume Senate
10:00:08 4 District 28 is going to take on some space?

10:00:09 5 A. Yes.

10:00:09 6 Q. What was your thought where that would come from?

10:00:12 7 A. Taylor County, specifically, because in 2011, we put
10:00:18 8 some of the population in northern Taylor County, which is
10:00:21 9 Abilene, into that district, that leaves a bunch more people
10:00:25 10 there in Taylor County and Callahan County, Shackelford County.

10:00:37 11 Q. And in equalizing those two districts, was it
10:00:40 12 necessary to go into Senate District 10 at all?

10:00:44 13 MR. HUDSON: Objection, form.

10:00:46 14 A. Was it necessary to go --

10:00:48 15 BY MR. DUNN:

10:00:48 16 Q. In order to make the Panhandle Districts that were
10:00:52 17 underpopulated within deviation under the new Census figures,
10:00:57 18 was there any need no mess with Senate District 10?

10:00:57 19 A. District --

10:01:01 20 MR. HUDSON: Objection, form, calls for speculation;
10:01:02 21 objection, form, improper hypothetical; objection, foundation,
10:01:05 22 Senator Seliger is not being offered as an expert.

10:01:08 23 A. My impression is District 10's composition is District
10:01:13 24 10 had nothing to do whatsoever to do with the Panhandle.

10:01:21 25 Q. Did you essentially give an opinion on the floor at

10:01:24 1 the time of the vote?

10:01:24 2 A. I made no comment on District 10.

10:01:27 3 Q. In terms of the changes that you thought could be made
10:01:31 4 to West Texas, were those things you talked about on the floor?

10:01:35 5 A. Not, specifically, no.

10:01:35 6 Q. Okay.

10:01:39 7 A. I mentioned some of the counties in the context of ag
10:01:44 8 versus oil and gas, that's all.

10:01:47 9 Q. And why did you mention those things?

10:01:50 10 A. To point out how --

10:01:52 11 MR. OPIELA: I'm going to object to that as -- in
10:01:53 12 terms of his thought processes, how he goes about making
10:01:57 13 decisions as legislative privilege.

10:02:13 14 BY MR. DUNN:

10:02:14 15 Q. Did you have any reasons that you, and I don't want
10:02:18 16 you to disclose them at the moment --

10:02:20 17 A. Okay.

10:02:20 18 Q. -- I just want to know if they exist.

10:02:20 19 Did you have any reasons that you voted against the
10:02:23 20 Senate plan other than what you said on the floor publically?

10:02:28 21 A. Yes.

10:02:28 22 Q. Have you -- are those other reasons that you have,
10:02:32 23 have you ever expressed them publically elsewhere?

10:02:35 24 A. Publically, no.

10:02:37 25 Q. Like to a newspaper, constituents or any sort of --

10:02:40 1

A. No.

10:02:40 2

Q. And so I assume you take legislative privileges on your other basis for voting against the Senate plan?

10:02:44 3

10:02:46 4

A. Yeah.

10:02:56 5

I'd like to tell you, but he would not approve.

10:03:00 6

Q. Okay. He is your lawyer.

10:03:01 7

A. He is.

10:03:02 8

Q. Okay. I say that for our record. It doesn't know who he is.

10:03:06 9

10:03:07 10

A. Okay.

10:03:08 11

Q. Is it the case that in the Texas Senate there's sometimes what's said in public about the motivations behind the legislative activity and there's something different in private?

10:03:17 13

10:03:21 14

A. All the time.

10:03:23 15

Q. Would you say more often than not that's the case?

10:03:25 16

A. Not necessarily, no.

10:03:26 17

Q. Would you say more often than not that's the case on the big items?

10:03:30 18

10:03:31 19

MR. HUDSON: Objection, form, calls for speculation; objection, foundation --

10:03:33 20

10:03:34 21

A. I would say it's often the case.

10:03:34 22

BY MR. DUNN:

10:03:34 23

Q. Do you think it's often the case with regard to redistricting?

10:03:38 24

10:03:38 25

MR. HUDSON: Same objections.

10:03:38 1 A. I think it's often the case on a lot of issues,
10:03:43 2 particularly more controversial ones.

10:03:43 3 BY MR. DUNN:

10:03:46 4 Q. Including redistricting?

10:03:46 5 MR. HUDSON: Same objections.

10:03:48 6 A. Yes.

10:03:50 7 BY MR. DUNN:

10:03:50 8 Q. You mentioned in response to Mr. -- well, let me ask
10:03:56 9 it this way. The -- you -- there used to be a Two-Thirds Rule
10:03:59 10 as it was referred to in the Senate; is that right?

10:04:02 11 A. Correct.

10:04:02 12 Q. And that has gone through some changes in the last
10:04:06 13 decade or so; is that right?

10:04:07 14 A. Correct.

10:04:07 15 Q. What were those changes?

10:04:10 16 A. In -- the rule was that it required two-thirds vote of
10:04:16 17 the Senate or 21 votes, for a bill that has come out of
10:04:21 18 committee to even go to the floor for debate. Several years
10:04:28 19 ago, that rule came up and the Lieutenant Governor wanted it
10:04:33 20 changed to 19, because the Republican majority was eroding in
10:04:41 21 the Senate. And the rule was changed and that was the instance
10:04:46 22 I talked about when Senator Estes voted against the rule change.

10:04:51 23 Then I think it was the 87th or 86th session, once
10:04:55 24 again as our majority eroded, when Beverly Powell won District
10:05:03 25 10, Pete forest lost his election in his district to Senator

10:05:09 1 Gutierrez, that the Lieutenant governor wanted the number
10:05:12 2 changed to 18 and so it was. But even with that rule change,
10:05:22 3 with 18 votes to go, if the Lieutenant Governor doesn't want the
10:05:29 4 bill to come to the floor, it doesn't come to floor.

10:05:32 5 Q. Is that because the Lieutenant Governor has the
10:05:35 6 authority to just pull a bill or is it because he can get the
10:05:38 7 votes he needs?

10:05:39 8 A. I would argue that there is no such authority because
10:05:42 9 the Senate makes the rules and the Senate has not done that, but
10:05:47 10 he does it and he's the one who recognizes senators on the
10:05:51 11 floor.

10:05:51 12 Q. And so it's been your experience that the Lieutenant
10:05:55 13 Governor would just decide a bill would not bet taken --

10:05:57 14 A. Absolutely.

10:05:58 15 Q. -- without a vote?

10:05:59 16 A. Absolutely.

10:06:00 17 Q. That's a tremendous power, would you agree?

10:06:04 18 A. Yes, and it is even in the Rules of the Senate or the
10:06:07 19 Constitution.

10:06:07 20 DEPOSITION COURT REPORTER: I'm sorry. Say that
10:06:07 21 again, "and it..."

10:06:07 22 A. And it is also not in the Rules of the Senate or the
10:06:07 23 Constitution.

10:06:14 24 BY MR. DUNN:

10:06:14 25 Q. And ultimately, the Lieutenant Governor's ability to

10:06:17 1 withdraw or remove any bill affects every Senator being able to
10:06:23 2 pursue their agenda, would you agree?

10:06:26 3 MR. HUDSON: Objection, form, foundation; objection,
10:06:29 4 form, calls for speculation.

10:06:32 5 A. Yes.

10:06:33 6 THE WITNESS: You talk really fast.

10:06:35 7 BY MR. DUNN:

10:06:36 8 Q. Now, I wanted to go back and -- on the first vote that
10:06:38 9 you described Senator Estes voting against, the first vote to
10:06:43 10 change the rules --

10:06:44 11 A. Yes.

10:06:44 12 Q. -- how did you vote?

10:06:45 13 A. I voted to change the rule.

10:06:47 14 Q. And what was the new number of senators that were
10:06:50 15 needed after the first rule change?

10:06:51 16 A. 19.

10:06:52 17 Q. And later, the rule was changed again. What was the
10:06:55 18 new number?

10:06:55 19 A. To 18.

10:06:56 20 Q. And how did you vote on that?

10:06:57 21 A. I voted in favor.

10:06:59 22 Q. So in terms of drawing a district that intentionally
10:07:04 23 would not elect a Democrat -- well, let me strike this.

10:07:12 24 If Senate District 10 had continued to select a
10:07:16 25 Democrat, then the rules still provided for Republican control

10:07:20 1 under the revised two-thirds rule; is that true?

10:07:23 2 A. Yes.

10:07:24 3 Q. In other words, it wasn't necessary to draw Senate
10:07:27 4 District 10 to elect a Republican, in order to get bills before
10:07:31 5 the floor?

10:07:32 6 MR. HUDSON: Objection, form, speculation, foundation.

10:07:35 7 A. As I understand the question, no.

10:07:37 8 BY MR. DUNN:

10:07:38 9 Q. Okay. Earlier, Mr. Hudson asked you some questions
10:07:46 10 about your private conversations with various senators, and he
10:07:49 11 asked you about Angela Paxton. And it sounded to me like you
10:07:53 12 had recalled something -- and again, don't get into it -- but
10:07:56 13 had you had a conversation with Angela Paxton?

10:07:57 14 A. Not private or public.

10:07:59 15 Q. Okay. I just couldn't --

10:07:59 16 A. Right.

10:08:01 17 Q. -- tell for sure how you would answer.

10:08:03 18 A. Sure.

10:08:04 19 Q. You also mention that you talked with Sean Opperman,
10:08:09 20 Senator Huffman's committee director?

10:08:11 21 A. Yes.

10:08:12 22 Q. Did you talk to him about the Senate plan?

10:08:15 23 MR. OPIELA: That would be to the substance of the
10:08:18 24 conversation. Just the fact that he -- I'm going to object on
10:08:18 25 legislative privilege.

10:08:20 1 MR. DUNN: He can't -- you're not even going to let
10:08:21 2 him say whether or not he spoke with Senator Opperman about the
10:08:24 3 plan? That's it?

10:08:25 4 MR. HUDSON: I just want to clarify on the record,
10:08:28 5 Sean Opperman is not a senator.

10:08:28 6 MR. DUNN: Excuse me.

10:08:31 7 THE WITNESS: He's a committee director.

10:08:31 8 MR. OPIELA: But he's legislative staff, nonetheless.

10:08:35 9 BY MR. DUNN:

10:08:35 10 Q. So all I'm asking is, was there a conversation about
10:08:39 11 between you and Mr. Opperman about the Senate plan without
10:08:42 12 getting into that?

10:08:44 13 MR. OPIELA: You can answer that.

10:08:46 14 A. Yes.

10:08:46 15 BY MR. DUNN:

10:08:46 16 Q. Was there more than one?

10:08:47 17 A. I think only one, that I recall.

10:08:48 18 Q. Was it in advance of the floor debate?

10:08:52 19 A. Yes.

10:08:53 20 Q. Was there any other witnesses to the discussion?

10:08:56 21 A. No.

10:08:57 22 Q. Was it your sense that Mr. Opperman was the, you know,
10:09:05 23 lead staffer for Senator Huffman on the plan?

10:09:07 24 A. He was committee director, yes. And if there was
10:09:11 25 anybody else that was part of that, my chief of staff might have

10:09:14 1 been there. Sean used to work for her, so...

10:09:17 2 Q. I see.

10:09:18 3 A. Yeah.

10:09:18 4 Q. So there may have been a witness in this conversation
10:09:21 5 and that person may have been your chief of staff?

10:09:24 6 A. May have been. I don't think so, but may have been.

10:09:29 7 (Videotaped deposition concludes).

10:09:29 8 MR. DUNN: That includes the offer of this deposition,
10:09:32 9 and so the Court knows and for the reporter's benefit, the page
10:09:36 10 and line designations have now been filed in E.C.F. 165, along
10:09:41 11 with the transcript to (mumbling), transcribed in the reporter's
10:09:46 12 record.

10:09:47 13 We're prepared to call our first witness.

10:09:47 14 JUDGE GUADERRAMA: All right.

10:09:49 15 MR. DUNN: But there will be a little bit of
10:09:50 16 technology change I'll need to make a little bit into the
10:09:53 17 examination. I'm hoping we can do that at the morning break.

10:09:56 18 JUDGE GUADERRAMA: Okay.

10:10:11 19 Who will be your first witness?

10:10:14 20 MR. DUNN: I call Senator Beverly Powell.

10:11:04 21 MR. SWEETEN: Take a break? In other words, start the
10:11:06 22 direct now?

10:11:07 23 Is there a morning break you want to take?

10:11:09 24 THE COURT: I thought we would go for two hours, since
10:11:12 25 we're going to do four-hour half, do two hours and take a break,

10:11:15 1 but if anybody needs a break now, we've been at it an hour and
10:11:19 2 ten minutes, we can take a break now. I'm not sure if that's
10:11:19 3 what you're getting at.

10:11:23 4 MR. SWEETEN: I'm just trying to get a tally of
10:11:23 5 when -- (indiscernible).

10:11:32 6 MR. DUNN: And so as I mentioned, I'm going to have to
10:11:32 7 transition some technology here and that'll take about
10:11:35 8 five minutes. And...

10:11:35 9 JUDGE GUADERRAMA: So, do you want to take a break
10:11:37 10 now? Is that what you're suggesting to me?

10:11:42 11 MR. DUNN: What I was -- I thought we could do the
10:11:42 12 introductory items and get sort of into the legislative history
10:11:45 13 and then we can take a break.

10:11:47 14 JUDGE GUADERRAMA: All right. So you let me know when
10:11:48 15 you want to do that.

10:11:49 16 MR. DUNN: I beg your pardon, sir?

10:11:51 17 THE COURT: You'll let me know when you want...

10:11:52 18 MR. DUNN: Please, yes.

10:11:52 19 THE COURT: All right. All right.

10:11:54 20 Senator Powell, come on up.

10:12:14 21 SENATOR BEVERLY POWELL,

10:12:24 22 DIRECT EXAMINATION BY THE PLAINTIFFS

10:12:26 23 BY MR. DUNN:

10:12:26 24 Q. Please tell us your name.

10:12:28 25 A. I'm Beverly Powell.

10:12:29 1 Q. Senator, we're going to need you to bring that
10:12:33 2 microphone as close as you can. The cavern in here absorbs the
10:12:37 3 voices and our court reporter will need to hear you.

10:12:41 4 Can you tell us how are you employed?

10:12:42 5 A. I am a state Senator for District 10, State of Texas.

10:12:45 6 Q. For how long?

10:12:47 7 A. This is my -- I'm at the end of my third year,
10:12:54 8 beginning of fourth.

10:12:54 9 Q. Could you tell us your race or ethnicity?

10:12:55 10 A. I'm a Caucasian.

10:12:55 11 Q. Can you start by just giving us a little bit of your
10:12:59 12 background, where you grew up, that sort of thing?

10:13:01 13 A. I have was born in Fort Worth and my parents moved to
10:13:06 14 Burleson when I was four. And I went through the public school
10:13:10 15 system in Burleson, graduated from Burleson High School. And,
10:13:15 16 you know, we had a very normal, healthy family life, lots of
10:13:21 17 activity and support from our parents.

10:13:24 18 Q. Where did you go to college?

10:13:26 19 A. I went to Texas Wesleyan University.

10:13:28 20 Q. That's in Fort Worth?

10:13:29 21 A. Yes, it is.

10:13:30 22 Q. Di you graduate from there?

10:13:33 23 A. I did. I graduated in 1992 with a Bachelor of Science
10:13:40 24 degree in psychology and I have a Master's in Business
10:13:43 25 Administration from Texas Wesleyan in 1999.

10:13:45 1 Q. And then what did you do?

10:13:47 2 A. Well, in my career, I am real estate professional.
10:13:55 3 I've had my brokers license, with the exception of about a
10:13:59 4 10-year period, since about 1975. And I was in partnership with
10:14:04 5 my family in land development, home building, and investment in
10:14:09 6 real estate projects.

10:14:10 7 Q. At some point, did you get into public service?

10:14:13 8 A. Yes, I did.

10:14:14 9 Q. Tell us about that?

10:14:15 10 A. In -- well, I preface my remarks by saying that in the
10:14:22 11 early 2000s, I became a member of the Board of Trustees for
10:14:28 12 Texas Wesleyan University. And I loved that service. I love
10:14:32 13 education and I believe strongly in education.

10:14:36 14 In 2007, a member of the Burleson Independent School
10:14:43 15 District Board of Trustees retired from being a trustee, and I
10:14:47 16 was invited to apply to fill his term. And so I was appointed
10:14:54 17 as a member of the Burleson Independent School District. I
10:14:58 18 think that was like in February in 2007, and then during the May
10:15:04 19 election cycle, I had to run for office, and I ran for office
10:15:10 20 and won that seat.

10:15:12 21 I was a School Board Trustee for Burleson ISD?

10:15:18 22 Q. Did you pursue other service after that?

10:15:20 23 A. Yes. I actually resigned my role as School Board
10:15:26 24 Trustee to run for the Texas State Senate in District 10.

10:15:30 25 Q. What year was this?

10:15:32 1 A. 2017, I believe.

10:15:34 2 Q. And which party did you seek the nomination?

10:15:36 3 A. The Democratic Party.

10:15:38 4 Q. Are you a Democrat?

10:15:39 5 A. I am a Democrat.

10:15:40 6 Q. Do you have any apologies about that?

10:15:43 7 A. I have none.

10:15:43 8 Q. Now what is -- were you ultimately successful in your
10:15:48 9 election contest?

10:15:48 10 A. I ultimately was successful.

10:15:50 11 Q. Who was the opponent that you ran against in that
10:15:53 12 election?

10:15:53 13 A. Well, I ran against Connie Burton in the general
10:15:58 14 election for Senate District 10.

10:16:00 15 Q. Was she the Republican nominee?

10:16:02 16 A. Yes, she was.

10:16:03 17 Q. And is her race or ethnicity also Caucasian?

10:16:08 18 A. Yes.

10:16:08 19 Q. Tell us about the campaign. How did you decide to
10:16:12 20 run, were you recruited, that sort of background?

10:16:15 21 A. I had a conversation one day at a Board of Trustee's
10:16:19 22 meeting at Texas Wesleyan University. And we were talking about
10:16:23 23 education, public ed and higher education, and I think
10:16:28 24 Commissioner Brooks said something to me like, well, it sounds
10:16:31 25 like you should run for higher office, and I said maybe I will.

10:16:35 1 And that started the thought process, that was the seed that led
10:16:43 2 me, ultimately, to think that through. And by, I think, May, I
10:16:51 3 had made the decision that I actually should run for Senate.

10:16:57 4 Q. Before making that decision, did you talk with other
10:17:00 5 state leaders in the community?

10:17:02 6 A. I talked with lots and lots of people, yes.

10:17:05 7 Q. The Court heard yesterday from Commissioner Brooks and
10:17:13 8 Justice of the Peace de Leon. Were you here for any of that
10:17:13 9 testimony?

10:17:13 10 A. Yes.

10:17:13 11 Q. Did you have contact with Judge de Leon before you
10:17:16 12 ran?

10:17:16 13 A. I did. I had lunch with him on one occasion. We had
10:17:22 14 a conversation about the possibility that I might run.

10:17:24 15 Q. At the time that you decided to run, were there any
10:17:28 16 other candidates that were seeking the Democratic nomination?

10:17:34 17 A. There was a Democratic candidate, Allison Campolo, who
10:17:38 18 actually entered her campaign sometime around March.

10:17:43 19 Q. What was her race or ethnicity?

10:17:45 20 A. She was also Caucasian.

10:17:47 21 Q. And ultimately, did you and she face off in the
10:17:51 22 primary election?

10:17:51 23 A. We did.

10:17:52 24 Q. Do you recall roughly what the outcome was?

10:17:53 25 A. Yes. I won, roughly.

10:17:58 1 Q. Do you recall roughly what the decision of the vote
10:18:01 2 was?

10:18:01 3 A. I think I won pretty soundly, maybe by ten points.

10:18:09 4 Q. And how would you describe the general election
10:18:11 5 contest after the nominations had been settled and you worked
10:18:15 6 towards November?

10:18:16 7 A. Well, we worked really hard, I'll just say that. I
10:18:19 8 know from my perspective, that's about as hard as I have ever
10:18:25 9 worked in my life. I put over 20,000 miles in my vehicle.
10:18:29 10 Traveled from South Lake to Benbrook and everywhere in between.
10:18:34 11 We attended every meeting that we were invited to. We attended
10:18:42 12 forums. And, you know, I became more and more confident it was
10:18:46 13 a race I could win.

10:18:49 14 Q. What were the neighborhoods -- I assume it's all of
10:18:51 15 them, but can you give us the main neighborhoods in Senate
10:18:53 16 District 10 that you were seeking votes from?

10:18:55 17 A. Well, I spent a lot of time in Poly, for instance, in
10:19:02 18 Southeast Tarrant County and Southeast Fort Worth, actually,
10:19:07 19 around the Texas Wesleyan University area. I've been really
10:19:12 20 instrumental in some development initiatives through my on the
10:19:17 21 Texas Wesleyan Board there, so we started sort of with that.

10:19:21 22 I visited African-American churches. We campaigned in
10:19:31 23 Fort Worth. We campaigned in North Fort Worth and northern
10:19:36 24 Tarrant County and the arm that goes up North Side, Fort Worth.
10:19:40 25 We campaigned in South Lake and Colleyville. And Mansfield is

10:19:48 1 an area that we spent a lot of time.

10:19:53 2 Q. And how would you describe these doors in southside
10:19:58 3 areas in terms of the predominate race or ethnicity of the
10:20:04 4 citizens there?

10:20:04 5 A. Well, the areas of SD-10 in north of downtown Fort
10:20:09 6 Worth are predominantly Hispanic. That is a large are of
10:20:13 7 Hispanic settlement.

10:20:14 8 Then in the southern portion of Fort Worth, down
10:20:20 9 around -- I guess down around Seminary South. My grandparents
10:20:23 10 lived on the old Seminary Drive, so I had been raised in that
10:20:27 11 area as well. Those areas around Seminary Drive and down toward
10:20:34 12 Loop 820 in south Fort Worth, are also an area of high
10:20:39 13 population of Hispanic neighborhoods.

10:20:42 14 African-American community is located predominantly in
10:20:49 15 that east Fort Worth, southeast Fort Worth area, from say
10:20:57 16 I-30 -- for Senate District 10, anyway -- from Interstate 30,
10:21:03 17 down through the Rosedale quarter down to Berry Street and even
10:21:08 18 further south towards Seminary Drive and beyond.

10:21:12 19 Q. Are there neighborhoods with significant Asian
10:21:16 20 population?

10:21:16 21 A. There are some significant Asian population, one over
10:21:22 22 in Arlington, probably in that 157 corridor in Arlington, and
10:21:29 23 then also along the Sylvania drive and (indiscernible) in
10:21:34 24 Fort Worth.

10:21:35 25 Q. And were you ultimately successful in the election?

10:21:37 1 A. Yes, I was.

10:21:38 2 Q. How would you describe the result in terms of
10:21:40 3 landslide, close, squeaker?

10:21:44 4 A. I don't think you'd call it a landslide, but I won by
10:21:49 5 10,000 votes. It was significant enough that I felt really good
10:21:54 6 about our victory.

10:21:55 7 Q. When did you take the oath of office?

10:21:58 8 A. I took the oath of office -- I believe it was January
10:22:02 9 the 8th of 2019.

10:22:03 10 Q. And you've been serving regularly in Senate District
10:22:08 11 10 since then?

10:22:08 12 A. Yes, sir, I have.

10:22:09 13 Q. Now, before we turn to the subject matter in this
10:22:12 14 case, tell us a little bit about what the duties and
10:22:14 15 responsibilities of a Senator are?

10:22:16 16 A. Well, certainly there are legislative responsibilities
10:22:20 17 every other year. In this last year, we had our regular session
10:22:26 18 and three special sessions, which is extremely time consuming
10:22:34 19 and sort of all consuming. And so I'm very proud of our
10:22:38 20 legislative efforts and our -- the legislation that we've gotten
10:22:43 21 across the finish line, but I think I'm more proud even of the
10:22:47 22 constituent service work that we do.

10:22:49 23 Q. What does that involve?

10:22:51 24 A. Well, our staff members certainly answer every single
10:22:57 25 email that comes across our desk and we try to help with

10:23:01 1 resources for our constituents. We've done everything we -- I
10:23:07 2 think one of the first things we did so amazing, we had a body
10:23:13 3 exhumed from a pauper's grave and exported to family members in
10:23:17 4 a state up north. And that was my first surprise at the
10:23:25 5 enormity of constituent work. We have united families with
10:23:31 6 adopted babies at the hospital, during the COVID crisis. We've
10:23:36 7 helped children in Child Protective Services get the medical
10:23:40 8 care that they need. We helped one baby get adopted by his
10:23:46 9 foster parents, in an effort to make sure that the child
10:23:51 10 received a kidney transplant.

10:23:57 11 During the COVID crisis, we did everything we could to
10:24:01 12 provide P.P.E. for hospitals and doctors, to make sure that when
10:24:07 13 vaccines became available, that those were disseminated
10:24:11 14 throughout Senate District 10 that met the needs of our
10:24:16 15 citizens.

10:24:16 16 On one occasion, you know, we even contracted for
10:24:23 17 P.P.E., so that we could get gloves and masks for doctors'
10:24:29 18 offices, because smaller doctors' offices didn't have the P.P.E.
10:24:33 19 supplies that they needed.

10:24:34 20 Q. Was it the case with when you took office and you
10:24:38 21 began to do this constituent work, you were the front door
10:24:42 22 access to state government?

10:24:44 23 A. Absolutely.

10:24:46 24 Q. Was it the sense that some of that work hadn't been
10:24:49 25 done prior to your election?

10:24:51 1 A. Yes, sir.

10:24:52 2 Q. Now, I'd like to fast-forward to the 2021
10:24:57 3 redistricting process, and starting in sort of 2019, do you
10:25:02 4 recall sending a letter to Senator Huffman then?

10:25:05 5 A. Yes, sir.

10:25:05 6 Q. Let me turn this on. So this should come on the
10:25:10 7 screen in front of you. And there should be three binders up
10:25:12 8 there.

10:25:12 9 MR. DUNN: And for the record, this is Brooks'
10:25:16 10 Exhibit 3.

10:25:35 11 JUDGE GUADERRAMA: This is the letter from Senator
10:25:36 12 Powell?

10:25:37 13 MR. DUNN: Yes, sir.

10:26:19 14 BY MR. DUNN:

10:26:19 15 Q. All right. Senator, you have there before you this
10:26:22 16 letter; is that true?

10:26:23 17 A. The letter dated October 30th?

10:26:25 18 Q. Yes. Can you give (indiscernible), please?

10:26:29 19 A. Yes, sir.

10:26:29 20 Q. 2019?

10:26:30 21 A. Yes, sir.

10:26:31 22 Q. What was your purpose of sending this letter?

10:26:35 23 A. We wanted to be sure that the redistricting committee
10:26:39 24 understood Senate District 10 and that they understood that we
10:26:44 25 were a majority-minority coalition district and a crossover

10:26:51 1

district.

10:26:52 2

Q. Did you receive a response to the letter?

10:26:54 3

A. No, we did not.

10:26:57 4

Q. Now you make a request of Senator Huffman in the

10:27:00 5

letter. What was that?

10:27:01 6

A. We told her that we would be happy to help facilitate

10:27:08 7

a redistricting committee meeting in Tarrant County.

10:27:11 8

Q. Was your invitation accepted?

10:27:14 9

A. No, it was not.

10:27:15 10

Q. Did you receive any feedback at all from Senator

10:27:18 11

Huffman to this request?

10:27:20 12

A. Not to my knowledge, no.

10:27:22 13

Q. And you sent second letter; is that true?

10:27:24 14

A. That's true.

10:27:26 15

Q. I'll take you to Exhibit 4, now, in your binder.

10:27:28 16

That's also on the screen.

10:27:30 17

When is this letter dated?

10:27:34 18

A. This letter is dated February the 18th, 2020.

10:27:37 19

Q. Why did you send a second letter?

10:27:40 20

A. Well, we still had the same belief that it was

10:27:43 21

important for the redistricting committee to understand Senate

10:27:49 22

District 10 and to understand Tarrant County, so we made

10:27:55 23

advanced -- an advanced effort to be sure that there was a place

10:28:00 24

where the meeting could be held and we wanted to offer that as

10:28:04 25

our suggestion.

10:28:05 1 Q. Did you receive any response to this letter?

10:28:07 2 A. Not to my knowledge, no, sir.

10:28:09 3 Q. Was your invitation here accepted?

10:28:12 4 A. No.

10:28:13 5 Q. Now the Court heard testimony about a staff meeting
10:28:18 6 held between your staff and Senator Huffman's staff, I think the
10:28:21 7 record reflects on February the 12th, were you at that meeting?

10:28:24 8 A. No, sir.

10:28:25 9 Q. Did you receive any report about the meeting?

10:28:27 10 A. Just that they had had a meeting and they came out of
10:28:31 11 that meeting with a sense that our population was within
10:28:38 12 reasonable deviation and that they -- that I believe it was
10:28:44 13 Mr. Opperman had said to them that he didn't think that we would
10:28:47 14 see any changes necessary for our district.

10:28:51 15 Q. Having that information, did that cause you to reach
10:28:55 16 any conclusion about maybe why neither of your letters were
10:28:59 17 responded to?

10:29:01 18 A. No, sir.

10:29:01 19 Q. Now you ultimately attended a meeting yourself; is
10:29:07 20 that true?

10:29:07 21 A. Yes, it is true.

10:29:08 22 Q. With Senator Huffman?

10:29:10 23 A. Yes, sir.

10:29:10 24 Q. Does November 19th sound about right, 2020?

10:29:14 25 A. Yes, sir.

10:29:15 1 Q. Tell us who was at that meeting?

10:29:17 2 A. That first meeting that was Gary Jones and me, and
10:29:25 3 Senator Huffman and Sean Opperman.

10:29:29 4 Q. Who is Gary Jones?

10:29:31 5 A. Gary Jones is my Chief of Staff.

10:29:33 6 Q. The Court has heard that Mr. Opperman was the
10:29:38 7 committee Director for Senator Huffman. Does that sound right
10:29:40 8 to you?

10:29:40 9 A. Yes, sir.

10:29:40 10 Q. What do you recall about that meeting?

10:29:44 11 A. It was not very substantive. There was not a lot of
10:29:51 12 conversation in that meeting. We were cautious with one
10:30:00 13 another, I think.

10:30:00 14 Q. Can you remember anything that was said?

10:30:07 15 A. No. It was -- there was very little said in that
10:30:12 16 meeting. It was a short meeting. Other than the fact that we
10:30:16 17 expressed again that Senate District 10 was within a normal
10:30:21 18 deviation, that was within 5 percent of being perfect
10:30:25 19 population, and that it functions as a majority-minority
10:30:33 20 coalition district and a crossover district, and that we felt
10:30:39 21 like that Senate District 10 could retain its current boundaries
10:30:47 22 as had been ruled in the 2012 redistricting signing by the
10:30:56 23 federal court.

10:30:56 24 Q. Do you recall if there were any maps in that meeting?

10:30:59 25 A. Yes, there was a map of SD-10.

10:31:04 1 MR. DUNN: Excuse me, Your Honor. May we stand at
10:31:08 2 ease one second?

10:31:16 3 THE COURT: Yes, sir.

10:31:22 4 BY MR. DUNN:

10:31:22 5 Q. You should have there on your screen Exhibit 7?

10:31:25 6 A. Yes, that's the map.

10:31:26 7 Q. This map was provided to you at a meeting with Senator
10:31:31 8 Huffman?

10:31:31 9 A. Yes, it was.

10:31:31 10 Q. And can you note for me -- it's sort of hard to read,
10:31:36 11 but what types of population statistics are in the right-hand
10:31:40 12 margin?

10:31:41 13 A. In the right-hand margin, there is some data about the
10:31:50 14 Black population of the district.

10:31:52 15 Q. Does it also list non-Anglo, Hispanic and Asian?

10:31:58 16 A. It does. It does.

10:32:00 17 Q. Now, I note that this -- I'll zoom back out.

10:32:04 18 A. I'm having just a little bit of trouble reading that
10:32:10 19 box.

10:32:11 20 Q. This looks like a photograph taken on a table?

10:32:13 21 A. That's right.

10:32:14 22 Q. Do you recall who made that photograph?

10:32:16 23 A. I think that Gary Jones did that.

10:32:19 24 Q. There was a second map, as well. I'm showing that to
10:32:22 25 you. It's page two of Exhibit 7.

10:32:24 1 A. All right.

10:32:25 2 Q. Does this map also contain racial data in the
10:32:30 3 right-hand column?

10:32:32 4 A. It does.

10:32:32 5 MR. DUNN: For the Court's record, there are better
10:32:35 6 versions in Brooks' Exhibit 9.

10:32:44 7 BY MR. DUNN:

10:32:44 8 Q. Did you ultimately then have another meeting with
10:32:50 9 Senator Huffman?

10:32:50 10 A. Yes, we did.

10:32:51 11 Q. September 24th, 2021, sound about right for the date
10:32:51 12 on that?

10:32:55 13 A. Yes, sir.

10:32:55 14 Q. Who was at that meeting?

10:32:57 15 A. I believe at that meeting was my Chief of Staff Gary
10:33:02 16 Jones and I, and Sean Opperman, Senator Huffman and Anne Mackin.

10:33:14 17 Q. Do you recall what was said?

10:33:16 18 A. We -- we again made our contention that the population
10:33:26 19 of Senate District 10 was within the standard deviation of being
10:33:32 20 the right size. As a matter of fact, I believe we were number
10:33:37 21 four out of 31 districts of being closest to the ideal size and
10:33:43 22 that Senate District 10 functions. Again, I make this statement
10:33:48 23 many times, that Senate District 10 functions as a
10:33:51 24 majority-minority coalition district, African-American and
10:33:59 25 Hispanic coalition district and a crossover district.

10:34:01 1 Q. Did you receive specific responses to those articles
10:34:04 2 that you made to Senator Huffman or Mr. Opperman?

10:34:11 3 A. I don't recall that we did.

10:34:15 4 Q. And did they ultimately give you a sense of where they
10:34:19 5 were headed with your map?

10:34:20 6 A. In that meeting, I don't believe so.

10:34:23 7 Q. Now did you provide some information to them?

10:34:26 8 A. We did.

10:34:27 9 Q. If you could look at Brooks' Exhibit 5.

10:34:56 10 All right. Are these the items -- since you have them
10:35:02 11 there in your binder, you can thumb through them -- are these
10:35:02 12 the items that you provided to Mr. Opperman and Senator Huffman
10:35:08 13 in that meeting?

10:35:09 14 A. Yes, they are.

10:35:10 15 Q. Just to show one example here, I'm on page five, what
10:35:12 16 does it depict?

10:35:15 17 A. This portrays the minority population in 2020.

10:35:32 18 Q. And this map, does it show the current District 10
10:35:36 19 lines?

10:35:37 20 A. Yes, it shows the current lines of Senate District 10.

10:35:42 21 Q. And do you recall there being a projector there?

10:35:45 22 A. Yes, I do.

10:35:47 23 Q. What was on the projector?

10:35:49 24 A. It was the -- I believe it was the new lines for
10:35:54 25 Senate District 10 --

10:35:54 1 Q. And --

10:35:56 2 A. -- on that day -- I'm sorry -- on that day, the new
10:35:58 3 lines for Senate District 10 were portrayed on the screen.

10:36:03 4 Q. All right. I'm showing you on the screen -- I'm going
10:36:05 5 to Texas District Viewer.

10:36:08 6 MR. DUNN: For the Courts' reference, all of the plans
10:36:10 7 that are considered by the Legislature are available publicly on
10:36:13 8 Texas District Viewer, which you can find by Googling those
10:36:16 9 words.

10:36:16 10 BY MR. DUNN:

10:36:17 11 Q. I have Plan 2101 on the screen here? Does that look
10:36:21 12 like the plan that you saw on the projector?

10:36:21 13 A. That's the plan we saw on the screen that day. It
10:36:25 14 showed the Tarrant County portion of Senate District 10,
10:36:32 15 basically cut down across the middle below Interstate 30. It
10:36:38 16 actually took out a portion all the way down to Rosedale street,
10:36:42 17 to Senate District 10, to Tarrant County, took out the
10:36:46 18 northern -- north end of downtown Hispanic population, and it
10:36:49 19 took out the arm that goes up through South Lake and
10:36:53 20 Colleyville.

10:36:54 21 Q. What did it add?

10:36:55 22 A. And it submerged those remaining portions of Tarrant
10:37:01 23 County into rural Johnson and Parker counties. It included
10:37:05 24 100 percent of those counties, which are largely Anglo, largely
10:37:12 25 Republican population.

10:37:13 1 Q. And did you say something to the Senator about this
10:37:18 2 when you saw the map, Senator Huffman?

10:37:21 3 A. I did.

10:37:21 4 Q. What did you say?

10:37:23 5 A. I said -- she asked me if I had any questions about
10:37:26 6 the map, and I said I can clearly see what you're attempting to
10:37:30 7 do here.

10:37:31 8 Q. Did you receive any response?

10:37:33 9 A. No.

10:37:35 10 Q. Now when you were talking about the -- going back to
10:37:39 11 Exhibit 5 -- those -- the packet of materials that you provided
10:37:42 12 to Senator Huffman, do you recall if Anne Mackin was in the
10:37:46 13 room?

10:37:46 14 A. I do.

10:37:47 15 Q. Do you recall if she had any reaction to those maps?

10:37:51 16 A. I believe Anne may have said I'm uncomfortable with
10:37:56 17 this.

10:37:56 18 Q. Uncomfortable about what? Do you know?

10:37:59 19 A. I don't know.

10:38:00 20 Q. Anything else about that meeting that you call --
10:38:04 21 excuse knee -- that you recall about the meeting?

10:38:06 22 A. I will say this, that I handed each one of those maps
10:38:10 23 to Senator Huffman, individually, and as I handed her each map I
10:38:16 24 read the title of the map. In other words, I would hand her one
10:38:19 25 and I would say this map of Senate District 10 highlights the

10:38:25 1 Black population. This map it shows you where the Hispanic
10:38:29 2 population is located in Senate District 10 and so forth. And I
10:38:34 3 handed her -- I believe, it was seven different maps.

10:38:38 4 Q. And did you do anything with those?

10:38:42 5 A. I handed them to her. She took the maps and then she
10:38:46 6 said let's initial these maps, and I said, okay. And one by one
10:38:53 7 she initialled each map and handed the map back to me and I
10:38:58 8 initialled each map.

10:38:59 9 Q. So to be clear, who's idea was it to initial the maps?

10:39:02 10 A. Senator Huffman.

10:39:03 11 Q. What happened, if you know, with those maps
10:39:06 12 afterwards?

10:39:06 13 A. I don't know.

10:39:07 14 Q. When you left the meeting, were they left behind?

10:39:11 15 A. When we left the meeting they were on the table.

10:39:14 16 Q. Now turning your attention to Exhibit 11. You want to
10:39:27 17 pull that up in your binder and let us know when you're there?

10:39:31 18 A. All right.

10:39:32 19 Q. What is this?

10:39:34 20 A. This is an email from Gary Jones to John Opperman.

10:39:41 21 Q. What is it dated?

10:39:43 22 A. It is dated September the 16th, 2021.

10:39:49 23 Q. Did you direct Mr. Jones to send this email?

10:39:53 24 A. Yes, I did.

10:39:54 25 Q. Who were the recipients?

10:39:57 1 A. Sean Opperman and Anne Mackin.

10:40:00 2 Q. All right. And you included a number of attachments;
10:40:04 3 is that right?

10:40:05 4 A. That's right.

10:40:05 5 Q. And what were those?

10:40:07 6 A. One of attachments was a letter that I had written to
10:40:11 7 Senator Huffman regarding our September 14th meeting and draft
10:40:19 8 proposed plan. And then there were maps attached to that email
10:40:32 9 that included maps of the minority population of Senate District
10:40:41 10 10 in 2020 and the Anglo population in 2020.

10:40:46 11 Q. Did you provide any court opinions?

10:40:49 12 A. Yes, sir, I did. I also included the 2012 Federal
10:41:00 13 Court decision regarding the redistricting of Senate District
10:41:04 14 10.

10:41:04 15 Q. In here Mr. Jones says, please confirm receipt. Do
10:41:09 16 you see that?

10:41:10 17 A. Yes, I do.

10:41:11 18 Q. Let me show you what is Brooks' Exhibit 12.

10:41:17 19 What is this?

10:41:19 20 A. It is an email from Sean Opperman back to Gary Jones.

10:41:27 21 Q. What does it say?

10:41:28 22 A. Thank you for reaching out. I briefly opened this
10:41:32 23 document. They appear to contain racial data, so I closed them
10:41:36 24 out right away. Just a reminder, we're drafting all maps
10:41:43 25 without regard to racial data and sending the drafts out for

10:41:47 1 legal compliance check.

10:41:48 2 Q. In the last part that you just read with "just a
10:41:51 3 reminder," was that the first you heard of this information when
10:41:53 4 you received this email?

10:41:58 5 A. I'm not sure about the answer to that.

10:42:02 6 Q. What did you make of the fact that they briefly and
10:42:05 7 immediately closed the documents, Mr. Opperman says?

10:42:08 8 A. Well --

10:42:12 9 MR. SWEETEN: Objection, Your Honor, what she --

10:42:16 10 JUDGE GUADERRAMA: She's not speculating what she made
10:42:18 11 of it, so I'll overrule that objection.

10:42:21 12 A. I thought that was a ridiculous response.

10:42:24 13 BY MR. DUNN:

10:42:24 14 Q. Why is that?

10:42:26 15 A. Well, our job is to do the write thing for the
10:42:32 16 citizens of Senate District 10 and all over the State of Texas,
10:42:35 17 and to disregard -- to say that you're disregarding information,
10:42:39 18 that's obvious it's ridiculous on its face.

10:42:42 19 Q. Now I'll call your attention to Brooks' Exhibit 13.

10:42:50 20 Let us know when you're there?

10:42:53 21 A. I'm there.

10:42:54 22 Q. What is this?

10:42:55 23 A. This is an email that I sent to all of the members of
10:43:02 24 the Senate.

10:43:02 25 Q. And why did you send this letter or email?

10:43:04 1 A. I sent this email, because I wanted to reinforce the
10:43:08 2 information that we had provided throughout the redistricting
10:43:12 3 process. I wanted to be sure that my colleagues had the
10:43:18 4 opportunity to see these maps, once again, the minority
10:43:22 5 population, and I wanted to be sure that everybody had all of
10:43:28 6 the information.

10:43:28 7 Q. And what is the date and time of this email?

10:43:33 8 A. The date is September 18, 2021.

10:43:37 9 Q. Was included in -- with this email, the same racial
10:43:41 10 shaded maps that you'd previously provided to Senator Huffman?

10:43:46 11 A. Yes, sir.

10:43:46 12 Q. As well as your letter?

10:43:48 13 A. As well as my letter to her.

10:43:50 14 Q. As well as the 2012 decision?

10:43:51 15 A. As well as the 2012 decision.

10:43:53 16 Q. And then you placed a map in the email; is that right?

10:43:55 17 A. I did.

10:43:56 18 Q. Why did you do that?

10:43:57 19 A. Why did I place the map in the email?

10:44:01 20 Q. Yes, ma'am.

10:44:02 21 A. Because I wanted to be certain that I had provided
10:44:05 22 that to every member of the Senate.

10:44:07 23 Q. And I notice here on your screen there's four blue
10:44:12 24 circles on the pink-shaded background. What were you showing
10:44:16 25 there?

10:44:17 1 A. Those are the areas that were cracked out. Those are
10:44:22 2 the minority district areas that were cracked out of Senate
10:44:25 3 District 10.

10:44:25 4 Q. Even under the old map?

10:44:27 5 A. Yes, sir.

10:44:28 6 Q. All right. Now I'll call your attention to Brooks'
10:44:33 7 Exhibit 14.

10:44:33 8 What is this?

10:44:37 9 A. This is an email from Joan Huffman to me.

10:44:52 10 Q. And what does it reflect?

10:45:05 11 A. Is this a read receipt? Is that what this is? I'm
10:45:12 12 sorry, I...

10:45:17 13 Q. This is the conversation you got back from the read
10:45:20 14 receipt to the email?

10:45:22 15 A. Right.

10:45:22 16 Q. Is that a yes?

10:45:23 17 A. Yes. I'm seeing that, yes.

10:45:26 18 Q. All right.

10:45:28 19 A. I'm sorry. It was -- it says that my email to her was
10:45:32 20 read on Saturday, September the 18th, 2021.

10:45:36 21 Q. It's hard to see on the screen.

10:45:38 22 A. It's hard to see on the screen and it's hard for these
10:45:41 23 eyes to see it on tiny print.

10:45:43 24 Q. Now, do you recall that the Senate began to have
10:45:47 25 committee meetings around September 24th, about the Senate

10:45:50 1 redistricting plan?

10:45:51 2 A. I do.

10:45:52 3 Q. Did a different version of the plan come out than the
10:45:55 4 one you'd seen on the projector that day?

10:45:58 5 A. Yes, sir.

10:45:59 6 Q. Let me go back to District Viewer and show you Plan
10:46:05 7 2108 is that on your screen?

10:46:07 8 A. It is.

10:46:07 9 Q. Is that the plan that came out before the committee
10:46:11 10 debate?

10:46:12 11 A. Yes, it did.

10:46:13 12 Q. And how was it different than the earlier plan you had
10:46:16 13 seen?

10:46:16 14 A. Well, this district actually dissects Parker County.
10:46:25 15 It takes a portion of Parker County out of their first map and
10:46:31 16 then it adds in Palo Pinto, Young, Stephens, Shackelford,
10:46:45 17 Callahan, and Brown counties. As far to the west nearly as
10:46:53 18 Abilene and as further south and west to Brownwood.

10:46:58 19 Q. Does this version of the proposed Senate Bill 4 have
10:47:04 20 the same orientation within Tarrant County?

10:47:07 21 A. No, it does not. It cracks Senate District 10 at, you
10:47:16 22 know, just below I-30.

10:47:19 23 Q. Were you given any notice that this plan would be
10:47:22 24 released?

10:47:22 25 A. No.

10:47:23 1 Q. How did you first learn of it?

10:47:25 2 A. I believe this is the map that came out somewhere at
10:47:29 3 9:30 in the evening, before the meeting schedule for the next
10:47:34 4 morning, and I think I had got a call from my Chief of Staff
10:47:41 5 about it.

10:47:42 6 Q. And the committee meeting was scheduled to be the next
10:47:45 7 morning?

10:47:45 8 A. Yes, sir.

10:47:45 9 Q. On your screen is Brooks' Exhibit 15.
10:47:50 10 Is this the email forwarding the plan?

10:47:59 11 A. Yes, it is.

10:48:00 12 Q. And it references S22101?

10:48:06 13 A. It is.

10:48:06 14 Q. Now it was sent -- the email was sent about 1:20 p.m.
10:48:11 15 Do you see that?

10:48:12 16 A. I do see it.

10:48:13 17 Q. And was it the case you learned of it later that
10:48:16 18 evening from your staff?

10:48:17 19 A. That's correct.

10:48:18 20 Q. All right.

10:48:19 21 MR. DUNN: Your Honor, now I think is the appropriate
10:48:20 22 time to do this technology transition.

10:48:24 23 JUDGE GUADERRAMA: So it is 10:48. Let's go ahead and
10:48:28 24 recess until 11:00. That'll give us 12 minutes.

11:04:44 25 (Break 10:48 a.m. to 11:04 a.m.)

11:04:44 1 BY MR. DUNN:

11:04:45 2 Q. All right. Senator, before the break, we were going
11:04:48 3 to transition and talk about the first committee -- senate
11:04:51 4 committee debate on September 24th. Before we do that -- and
11:04:55 5 tell us kind of, as you have experienced it with the typical
11:04:59 6 standard practices for passage of a bill in a committee meeting,
11:05:04 7 you know, what the hearing process looks like in the Texas
11:05:08 8 Senate?

11:05:08 9 A. Well, a typical committee process would be that the
11:05:11 10 senator ringing the bill lays it out in the beginning, and
11:05:16 11 they'll typically have a resource witness or an expert witness
11:05:20 12 that comes to elaborate on the bill that is being considered and
11:05:26 13 then they will open it for public testimony and you'll hear, you
11:05:33 14 know, sometimes a few minutes of public testimony and sometimes
11:05:36 15 hours and hours of public testimony.

11:05:38 16 Q. The senator offering the measure, they typically very
11:05:42 17 well informed of the problem the bill's intending to address and
11:05:47 18 the solutions they were proposing?

11:05:50 19 A. Yes.

11:05:51 20 Q. Are you typically able to get details?

11:05:53 21 A. Yes, sir.

11:05:53 22 Q. Are you able to determine, in a typical circumstance,
11:05:56 23 where the bill came from, what the complaint was they brought
11:05:59 24 the bill for, that sort of thing?

11:06:01 25 A. Yes, sir.

11:06:02 1 Q. In terms of resource witnesses, are the resource
11:06:06 2 witnesses typically knowledgeable on the bill?

11:06:08 3 A. They are.

11:06:09 4 Q. And is it the case that bills are held over before
11:06:13 5 they're voted on or how does that work?

11:06:15 6 A. Explain to me what you mean by held over.

11:06:18 7 Q. Sure. When the bill is laid out in committee, do they
11:06:21 8 typically vote right there that day or is it typically held over
11:06:23 9 a different day to vote?

11:06:23 10 A. It depends. It depends on the time of day that it is.
11:06:28 11 Sometimes you vote right away. But if there's not a quorum
11:06:34 12 present and you can't, then it will be held over to the next
11:06:36 13 day.

11:06:37 14 Q. And in controversial bills or that bills that get a
11:06:42 15 lot of attention, do you expect a lot of hearings on those?

11:06:46 16 A. Yes, you do.

11:06:47 17 Q. Now, the September 24th meeting of the Senate
11:06:52 18 Redistricting Committee, are you on that committee, were you on
11:06:54 19 the committee?

11:06:54 20 A. I am not on redistricting.

11:06:56 21 Q. Did you attend that committee meeting?

11:06:59 22 A. Yes, I did.

11:06:59 23 Q. Do you recall at the beginning of the meeting that
11:07:02 24 Senator Huffman laid out a list of priorities that she had
11:07:05 25 alleged to have followed in drafting the map?

11:07:08 1 MR. SWEETEN: Your Honor, I've not been objecting, but
11:07:11 2 I object to leading, leading form of the direct examination
11:07:14 3 that's being utilized.

11:07:16 4 JUDGE GUADERRAMA: All right.

11:07:17 5 Mr. Dunn, let's not -- rephrase:

11:07:21 6 MR. DUNN: We're trying to get to the spot, I'll do
11:07:24 7 better.

11:07:24 8 JUDGE GUADERRAMA: Appreciate that.

11:07:25 9 BY MR. DUNN:

11:07:26 10 Q. Let me show you on the screen what was previously
11:07:30 11 admitted as Defendants' Exhibit 59. I'm going to play 4:54 to
11:07:35 12 5:23.

11:07:40 13 (Video and audio played).

11:07:51 14 *SENATOR HUFFMAN: My goals and priorities in*
11:07:52 15 *developing these proposed plans, include first and*
11:07:54 16 *foremost abiding by all applicable law, equalizing*
11:07:58 17 *population across districts, reserving political*
11:08:01 18 *subdivisions and communities of interest, when*
11:08:03 19 *possible, preserving the cores of previous districts*
11:08:05 20 *to the extent possible, avoiding pairing incumbent*
11:08:11 21 *members, achieving geographic compactness when*
11:08:15 22 *possible and accommodating incumbent priorities also*
11:08:17 23 *when possible.*

11:08:17 24 *In the Senate pro- --*

11:08:18 25 (Video and audio stopped).

11:08:18 1 BY MR. DUNN:

11:08:19 2 Q. Was there any mention there by Senator Huffman a
11:08:22 3 partisanship?

11:08:22 4 A. No, there isn't.

11:08:23 5 Q. With regard to the factors that she listed, how do
11:08:28 6 they apply to the latest version of the bill that you had seen
11:08:32 7 the night before on Senate District 10?

11:08:40 8 A. Well, I don't see where they applied at all to the new
11:08:42 9 version to Senate District 10, certainly not in terms of
11:08:47 10 communities of interest, not in terms of compactness and -- nor
11:08:54 11 any of the priorities that she had listed for how she was going
11:08:58 12 to develop these new districts.

11:09:01 13 Q. At the onset of the meeting, were there maps available
11:09:07 14 to the public?

11:09:07 15 A. There were. If you'll notice in this picture that
11:09:10 16 there's a big giant map on an easel at the front of the Senate
11:09:16 17 chambers, and on the day that we considered the very -- for the
11:09:21 18 first time that map, that included those seven counties, it
11:09:26 19 still had the old map that had just Johnson and Parker counties,
11:09:30 20 because that whole transition happened so quickly, they didn't
11:09:34 21 prepare a new map.

11:09:35 22 Q. For clarity of the record, was there any map blown up
11:09:39 23 and available on an easel that reflected the map that had just
11:09:43 24 come out?

11:09:43 25 A. No.

11:09:44 1 Q. Do you recall there was a discussion during the
11:09:48 2 committee hearing about who Senator Powell [sic] talked to about
11:09:51 3 the changes to Senate District 10, which are the senators she
11:09:55 4 spoke with?

11:09:55 5 A. Senator Powell or Senator Huffman?

11:09:57 6 Q. Senator Huffman.

11:09:59 7 A. I do you recall that discussion.

11:10:03 8 Q. Again, showing Exhibit 59, 13:48 to 13:14.

11:10:03 9 (Video and audio played).

11:10:17 10 *SENATOR POWELL: And did you communicate with any of*
11:10:18 11 *the representatives of those districts before you*
11:10:19 12 *merged that into Senate District 10?*

11:10:27 13 *SENATOR HUFFMAN: Uh, some of the work. I spoke to*
11:10:28 14 *Senator Perry, to Senator Springer. I do not believe*
11:10:32 15 *I spoke to Senator Buckingham.*

11:10:35 16 *SENATOR POWELL: And did you speak to me?*

11:10:36 17 *SENATOR HUFFMAN: I did not speak to you.*

11:10:37 18 (Video and audio stopped).

11:10:37 19 BY MR. DUNN:

11:10:38 20 Q. What would you say the circumstances of Senator
11:10:41 21 Buckingham were at that point?

11:10:44 22 A. Are you talking about in terms of her district?

11:10:47 23 Q. Yes.

11:10:48 24 A. Senator Buckingham had made the decision to run for a
11:10:51 25 statewide race.

11:10:53 1 Q. And why is it you asked about who Senator Huffman had
11:10:57 2 talked to about the changes to Senate District 10?

11:11:00 3 A. Well, I wanted to know how you would make a decision
11:11:04 4 to change that map in that fashion. It was so drastic to cut
11:11:11 5 Parker County in half, now, and submerge those minority
11:11:17 6 communities into all those outlying, rural-Anglo counties. I
11:11:23 7 wanted to know how she came to that decision, because she
11:11:26 8 certainly never, during the process, ever talked to me.

11:11:29 9 Q. What do you make of that decision not to talk to you
11:11:32 10 about it?

11:11:32 11 A. Well, the only decision, the only conclusion you could
11:11:37 12 come to, she didn't care what I thought.

11:11:41 13 Q. Now, do you recall also a discussion where Senator
11:11:45 14 Huffman laid out Supreme Court and other court decisions that
11:11:48 15 she was following?

11:11:49 16 A. Yes, I do.

11:11:50 17 Q. Again, Defendants' Exhibit 59, 24:51 to 26:13.

11:11:50 18 (Video and audio played).

11:12:01 19 *SENATOR POWELL: In fact, I have a question for you.*

11:12:02 20 *Who drew these maps?*

11:12:05 21 *SENATOR HUFFMAN: I drew the map of all -- with my two*
11:12:08 22 *attorneys and my -- who are members of my staff.*

11:12:12 23 *SENATOR POWELL: And who are those attorneys?*

11:12:14 24 *SENATOR HUFFMAN: Anne Mackin, who's sitting right*
11:12:16 25 *next to me, and Sean Opperman, who is up at the dais*

11:12:20 1 as the committee director with Senator Hinojoza,
11:12:24 2 currently.
11:12:25 3 SENATOR POWELL: And which of these lines for Senate
11:12:28 4 District 10 did you draw and which did they draw?
11:12:30 5 SENATOR HUFFMAN: I was in the room when every part of
11:12:33 6 this map was drawn.
11:12:34 7 POWELL: Okay. And which --
11:12:35 8 SENATOR HUFFMAN: I didn't do anything without my
11:12:37 9 direction.
11:12:40 10 POWELL: Okay. And --
11:12:40 11 (Video and audio stopped).
11:12:40 12 BY MR. DUNN:
11:12:41 13 Q. Now you mentioned -- I think Senator Huffman just
11:12:42 14 mentioned that seated to her left, or our right looking at the
11:12:45 15 screen, is Anne Mackin?
11:12:49 16 A. Yes, sir.
11:12:49 17 Q. Is that the same Anne Mackin you had provided the
11:12:52 18 racial shaded data -- map to?
11:12:55 19 A. Yes, sir.
11:12:55 20 Q. Now, was there a resource witness available at this
11:13:00 21 hearing?
11:13:00 22 A. Yes, there was.
11:13:01 23 Q. And can you recall where he was from?
11:13:03 24 A. I'm sorry, I don't.
11:13:05 25 Q. Let me show you what is Defendants' Exhibit 59, 35:42

11:13:11 1 to 36:42?

11:13:11 2 (Video and audio played).

11:13:14 3 *SENATOR HUFFMAN: However, I am going to answer to*
11:13:14 4 *your comment.*

11:13:18 5 *Our approach to this process was informed by the*
11:13:18 6 *redistricting juris prudence.*

11:13:21 7 (Video and audio stopped).

11:13:21 8 MR. DUNN: Excuse me. This is the...

11:13:21 9 *SENATOR HUFFMAN: -- from the United States Supreme*
11:13:23 10 *Court, as well as other applicable -- applicable*
11:13:27 11 *precedent.*

11:13:27 12 *Several key cases are worth highlighting. Abbott*
11:13:32 13 *v. Perez, 2018 Supreme Court case; Cooper v. Harris,*
11:13:36 14 *a 2017 Supreme Court case. They make clear that any*
11:13:40 15 *redistricting decisions made on the basis of race*
11:13:44 16 *must be narrowly tailored to achieve compliance with*
11:13:48 17 *the Voting Rights Act.*

11:13:48 18 *In Cooper v. Harris, Justice Kagan writing for*
11:13:52 19 *the majority hails, when a state invokes the VRA to*
11:13:54 20 *justify race-based districting, it must show to meet*
11:13:58 21 *the narrow tailoring requirement that it had a strong*
11:14:03 22 *basis in evidence for concluding that the statute*
11:14:06 23 *required its actions. That was Cooper v. Harris, a*
11:14:10 24 *2017 Supreme Court case quoting a.m. Legislative*
11:14:13 25 *Black Caucus v. Alabama, a 2015 case.*

11:14:19 1 *Based on this warning against race-based*
11:14:20 2 *districting, I drafted all of the proposed maps*
11:14:24 3 *totally blind to race. Once I had drafted the maps,*
11:14:28 4 *I ensured that they underwent a legal compliance*
11:14:29 5 *check to insure there were no inadvertent violations*
11:14:33 6 *of any law, including the Voting Rights Act.*

11:14:36 7 *Thank you.*

11:14:37 8 (Video and audio stopped).

11:14:37 9 BY MR. DUNN:

11:14:37 10 Q. And you what did you make of Senator Huffman listing
11:14:43 11 off those cases?

11:14:44 12 A. The only thing that I could conclude from her comments
11:14:49 13 there was that it was clear and intentional to add Anglo voters
11:14:55 14 to Senate District 10.

11:14:57 15 Q. Did it appear that Senator Huffman had read some case
11:15:00 16 law or at least she was making that representation?

11:15:01 17 A. It did.

11:15:03 18 MR. DUNN: Now, I need to correct the record. The
11:15:06 19 previous and just played excerpt is at Defendants' 59, 24:51 to
11:15:12 20 26:13.

11:15:12 21 BY MR. DUNN:

11:15:14 22 Q. Now, returning to the resource witness.

11:15:16 23 MR. DUNN: That's at Defendants' Exhibit 59, 35:42 to
11:15:21 24 36:42.

11:15:21 25 (Video and audio start).

11:15:31 1 *MALE SPEAKER 1: Honestly, the work experience, how*
11:15:33 2 *long you have been with the AG's office, items*
11:15:37 3 *specifically for this project, would you go in*
11:15:40 4 *detail, starting today with your background, probably*
11:15:44 5 *going back to at least law school?*

11:15:48 6 *MALE SPEAKER 2: I'd be happy to do that.*

11:15:50 7 *So, I started at the AG's office in June of last*
11:15:52 8 *year as an Assistant Attorney General, in the General*
11:15:55 9 *Counsel Division, was later promoted to General*
11:15:59 10 *Counsel. Prior to that I worked as a staff attorney*
11:16:01 11 *at the Texas Supreme Court for about six and a half*
11:16:04 12 *years, and was a litigator at the AG's office in*
11:16:08 13 *private practice for few years before that. Before*
11:16:11 14 *that, I did a clerkship on the 14th Court of Appeals*
11:16:15 15 *in Houston, and went to school law school at Baylor*
11:16:18 16 *Law School:*

11:16:18 17 *To answer your question, I was not hired*
11:16:21 18 *directly, really, to any redistricting projects.*

11:16:21 19 *(Video and audio stop).*

11:16:21 20 BY MR. DUNN:

11:16:26 21 Q. What did you make of the qualifications and background
11:16:28 22 that the Attorney General lawyer stated at the committee
11:16:32 23 hearing?

11:16:32 24 A. Well, I'm sure that he is a very fine lawyer, but it
11:16:37 25 seemed to me that he was coming to testify on a matter that he

11:16:43 1 didn't have a lot of experience in.

11:16:46 2 Q. Do you recall there was a discussion where the lawyer
11:16:48 3 was asked what kind of political or campaign experience he had?

11:16:52 4 A. Yes, I do.

11:16:54 5 MR. DUNN: For the record, that's Defendants' 59,
11:16:58 6 36:42 to 38:00.

11:16:58 7 (Video and audio start).

11:17:02 8 SENATOR WHITMIRE: Have you been employed by a
11:17:04 9 campaign in your background?

11:17:05 10 MALE SPEAKER: Absolutely not.

11:17:09 11 SENATOR WHITMIRE: Fair to ask if you've volunteered
11:17:12 12 in a campaign in the past?

11:17:12 13 MALE SPEAKER: I'm sorry. Could you --

11:17:14 14 SENATOR WHITMIRE: Have you volunteered in previous
11:17:16 15 campaigns in your young adulthood?

11:17:16 16 MALE SPEAKER: I assume that the context of your
11:17:24 17 questions is would be for General Paxton or any
11:17:24 18 political candidate?

11:17:27 19 SENATOR WHITMIRE: No, anyone. Are you -- I'm just --

11:17:27 20 MALE SPEAKER: Okay.

11:17:28 21 SENATOR WHITMIRE: I think it's important for us to
11:17:29 22 know when we have -- when in your position to know
11:17:33 23 what you bring to the table, so education in real
11:17:40 24 life experience work, in particular, this is so
11:17:43 25 political, have you been involved in campaigns that

11:17:48 1 you can tell us about?

11:17:51 2 MALE SPEAKER: I have been very intermittently
11:17:53 3 involved in campaigns in a volunteer capacity a
11:17:57 4 handful of times in the last ten.

11:18:01 5 SENATOR WHITMIRE: So your answer is yes?

11:18:04 6 You know, it's not against the law. I'm not
11:18:06 7 asking -- you don't have to take the Fifth Amendment.
11:18:09 8 I just 'think it's a fair question to know what your
11:18:12 9 work experience affiliations have been.

11:18:18 10 Thank you.

11:18:18 11 (Video and audio stop).

11:18:18 12 BY MR. DUNN:

11:18:18 13 Q. What, if anything, worried you about this exchange?

11:18:24 14 A. Well, it was clear that he had personal political
11:18:30 15 needs.

11:18:30 16 Q. And we all do, is that your experience?

11:18:32 17 A. It is my experience.

11:18:35 18 Q. For our record, who was the Senator asking those
11:18:38 19 questions?

11:18:38 20 A. That was Senator John Whitmire.

11:18:41 21 Q. Have you been in committee -- I'm sorry -- have you
11:18:46 22 been in meetings where the Attorney General's office has sent a
11:18:48 23 resource lawyer?

11:18:49 24 A. I have.

11:18:50 25 Q. When that has happened, how would you describe some of

11:18:54 1 the experience and knowledge of the resource it sent?

11:18:58 2 A. I would say, usually, that they had knowledge of the
11:19:03 3 subject matter and experience in that field.

11:19:06 4 Q. Later, was there a discussion about who were the
11:19:12 5 lawyers in the Attorney General's office doing the legal
11:19:15 6 compliance check and working on redistricting?

11:19:17 7 A. Yes, I did.

11:19:18 8 MR DUNN: Defendants' Exhibit 59, 49:45 to 50:22?
11:19:18 9 (Video and audio played).

11:19:27 10 SENATOR POWELL: *Um, do you happen to know who in your*
11:19:29 11 *office is involved in drawing district lines? Who*
11:19:32 12 *specifically might be involved in it?*

11:19:37 13 MALE SPEAKER: *So just to be clear on the question, no*
11:19:41 14 *one in our office is assigned to draw district lines.*
11:19:45 15 *Just to reframe it, if I can, in terms of our role in*
11:19:49 16 *providing legal advice, if you're looking for*
11:19:52 17 *specific names of who has been assigned to that work,*
11:19:56 18 *I'd be happy to provide that with you and get with*
11:19:59 19 *you.*

11:20:01 20 SENATOR POWELL: *That would be great. Thank you so*
11:20:01 21 *much.*

11:20:02 22 (Video and audio stopped).

11:20:02 23 BY MR. DUNN:

11:20:04 24 Q. Were you ever provided the information you were
11:20:06 25 promised there?

11:20:06 1 A. No, sir.

11:20:07 2 Q. Now were there any other resource witnesses offered at

11:20:12 3 this hearing with respect to the Senate plan?

11:20:14 4 A. I believe it was the demographer.

11:20:19 5 Q. Was that the following day, the demographer came in?

11:20:20 6 A. It might have been.

11:20:22 7 Q. There were other outside experts that testified, do

11:20:26 8 you recall that?

11:20:26 9 A. Yes.

11:20:29 10 MR. DUNN: At Defendants' 59, 104 to -- 104:16 to

11:20:34 11 104:41.

11:20:34 12 (Video and audio played).

11:20:37 13 *LULAC PRESIDENT GARCIA: You just -- the same thing*

11:20:39 14 *happened in District 10 in Fort Worth, where Black*

11:20:42 15 *and Brown districts are put in with White rural*

11:20:46 16 *districts. You never see the other happen. It's*

11:20:49 17 *only Anglo rural and suburban areas coming in and*

11:20:53 18 *scooping up Black and Brown voters in 10 or 20*

11:20:56 19 *percent increments, so they are effectively diluted*

11:20:56 20 *and cracked.*

11:21:01 21 *What we've seen today --*

11:21:03 22 (Video and audio stop).

11:21:03 23 BY MR. DUNN:

11:21:04 24 Q. Was that Domingo Garcia the LULAC National President?

11:21:08 25 A. Yes, it is.

11:21:09 1 Q. Had you asked him to do that, show up at that meeting?

11:21:12 2 A. No, I did not.

11:21:13 3 Q. And was that statement he just made, made to all of
11:21:18 4 the senators present?

11:21:18 5 A. Yes, it was.

11:21:19 6 Q. Did he make other statements about Senate District 10?

11:21:23 7 A. Yes, he did.

11:21:25 8 MR. DUNN: At Defendants' 59, 105:52 to 106:41.

11:21:25 9 (Video and audio start).

11:21:36 10 *LULAC PRESIDENT GARCIA: -- problems with Tarrant*
11:21:36 11 *County in District 10, there are African-American,*
11:21:39 12 *Latino districts are a cohesive group, primarily*
11:21:41 13 *concentrated on the -- in the City of Fort Worth and*
11:21:44 14 *on south side in Arlington. Those districts on the*
11:21:47 15 *proposed map would be within rural, predominantly*
11:21:49 16 *White areas.*

11:21:51 17 *Ranchers and farmers have nothing to do with*
11:21:54 18 *Texas Stadium, Ranger Stadium or Downtown Fort Worth*
11:21:58 19 *and the Stockyards. They just don't. And if you're*
11:22:00 20 *going to keep people of common interest together, you*
11:22:03 21 *should put them together. Dallas and Fort Worth*
11:22:06 22 *could be merged; they're 20 miles apart, not a*
11:22:09 23 *problem, similar interest, similar urban and suburban*
11:22:12 24 *areas. Why put them with Wise County, Decatur,*
11:22:16 25 *Texas, where you have more cows than people? It*

11:22:20 1 *doesn't make sense, as opposed to what you have in*
11:22:22 2 *Dallas and Tarrant County.*

11:22:24 3 (Video and audio stop).

11:22:24 4 BY MR. DUNN:

11:22:24 5 Q. And again, was that statement by Mr. Garcia made to
11:22:28 6 the senators present at the committee?

11:22:30 7 A. Yes, sir.

11:22:30 8 Q. Was there another outside legal expert, a Mr. Lee, who
11:22:34 9 came and spoke?

11:22:35 10 A. Yes, he did.

11:22:38 11 MR. DUNN: Defendants' Exhibit 59, 135:34 to 136:08.

11:22:44 12 And for the Courts' reference, Mr. Lee had a handout,
11:22:45 13 which has been admitted as Brooks' Exhibit 16.

11:22:45 14 (Video and audio played).

11:22:50 15 *SPEAKER LEE: And I will note with respect to Senate*

11:22:53 16 *District 10, that Senate District 10 was found to*

11:22:54 17 *have been intentionally discriminatory last decade,*

11:23:00 18 *when the State also tried to redraw the district in a*

11:23:02 19 *way that cracked minority communities and diluted*

11:23:07 20 *their power. In addition there's lots of evidence*

11:23:09 21 *that Senate District 10 is an effective coalition*

11:23:15 22 *district I am not here to say it is or not but*

11:23:18 23 *there's lots of evidence to suggest the state needs*

11:23:20 24 *to take a closer look.*

11:23:23 25 (Video and audio stopped).

11:23:23 1 BY MR. DUNN:

11:23:23 2 Q. And was that statement, again, by Mr. Lee, made to all
11:23:27 3 of the members of the Senate Redistricting Committee?

11:23:29 4 A. Yes, it was.

11:23:30 5 Q. And then was there a discussion or an exchange between
11:23:34 6 Senator Huffman and Mr. Lee about coalition districts?

11:23:38 7 A. Yes, sir.

11:23:39 8 MR. DUNN: That begins at Defendants' Exhibit 59,
11:23:43 9 147:19 and concludes at 149:07.

11:23:43 10 (Video and audio played).

11:23:43 11 SENATOR HUFFMAN: I'd like to -- in your testimony,
11:23:51 12 you referred to a Fifth Circuit 1998 case, Campos v.
11:23:54 13 City of Baytown, correct --

11:23:56 14 SPEAKER LEE: That is correct.

11:23:56 15 SENATOR HUFFMAN: -- is that what are you referring
11:23:58 16 to?

11:23:58 17 SPEAKER LEE: Yes.

11:23:58 18 SENATOR HUFFMAN: Yes.

11:23:59 19 How do you -- and you suggested it authorized or
11:24:06 20 required crossover coalition districts, how do you
11:24:11 21 square that with the Bartlett case, which is The
11:24:14 22 United States Supreme Court, 2009, Bartlett v.
11:24:18 23 Strickland, which made it clear that the Voting
11:24:22 24 Rights Act does not require the creation of coalition
11:24:25 25 of crossover districts?

11:24:27 1 *SPEAKER LEE: Well, I think I would disagree with you*
11:24:27 2 *about what Bartlett was about. Bartlett what about*
11:24:31 3 *crossover districts, in other words, where voters are*
11:24:33 4 *able to elect with support from White voters. That's*
11:24:37 5 *a crossover district. A minority coalition district*
11:24:40 6 *is where two or more minority groups are politically*
11:24:43 7 *cohesive.*

11:24:44 8 *So, in Texas, for example, Black and Latino*
11:24:48 9 *voters, you know, or in Fort Bend County, like Latino*
11:24:51 10 *Asian voters, might be politically cohesive, and so,*
11:24:55 11 *you know, Bartlett is a case out of North Carolina,*
11:24:57 12 *it did not involve other non-White groups. It was a*
11:24:57 13 *case about...*

11:25:03 14 *SENATOR HUFFMAN: Well, I believe that Bartlett*
11:25:04 15 *specifically states that nothing in Section 2 grants*
11:25:07 16 *special protection to a minority group's right to*
11:25:10 17 *form political coalitions. Do you agree...*

11:25:13 18 *SPEAKER LEE: And I again I think that's talking about*
11:25:15 19 *White voters in this case. It is not, you know*
11:25:15 20 *the...*

11:25:21 21 *SENATOR HUFFMAN: And of course, there are many legal*
11:25:23 22 *scholars that would disagree with you on that.*

11:25:26 23 *SPEAKER LEE: I don't think that that is really where*
11:25:28 24 *the law is currently. And it's certainly not the --*
11:25:32 25 *well, I don't -- I don't think that that's where the*

11:25:34 1 *law is. If that is the advice that you're getting*
11:25:36 2 *from the Attorney General's office...*
11:25:39 3 *SENATOR HUFFMAN: No, I'm getting it from the Supreme*
11:25:41 4 *Court of the United States of America, I just*
11:25:43 5 *politely disagree. Thank you very much for answering*
11:25:46 6 *my question. Appreciate it.*
11:25:47 7 *(Video and audio stop).*
11:25:47 8 BY MR. DUNN:
11:25:48 9 Q. Now, Senator Powell, are you a lawyer?
11:25:51 10 A. No, I'm not.
11:25:51 11 Q. Was it clear to you that there was at least a
11:25:54 12 disagreement here over what the law said in this area?
11:25:56 13 A. There is a disagreement there.
11:25:58 14 Q. All right. Now the hearing was held over the
11:26:01 15 following day, September 25th?
11:26:02 16 A. Yes.
11:26:02 17 Q. Did you attend that hearing?
11:26:04 18 A. Yes.
11:26:04 19 Q. You mentioned earlier a demographer was present at
11:26:09 20 part of the hearing. Do you recall that?
11:26:10 21 A. Yes.
11:26:11 22 MR. DUNN: Defendants' Exhibit 61, 1:25:13 to 1:26:18.
11:26:11 23 *(Video and audio start).*
11:26:19 24 *SENATOR ALVARADO: Start with the statewide numbers.*
11:26:21 25 *How did Texas' population change according to the*

11:26:24 1 2020 Census?

11:26:27 2 *SPEAKER POTTER: Texas added more people than any*
11:26:29 3 *other state, just under 4 million, 3,999,944. And*
11:26:39 4 *that's also a rapid increase. We grew at a rate of*
11:26:44 5 *15.9 percent of the decade. That's faster than any*
11:26:48 6 *other state, except for Idaho and Utah.*

11:26:53 7 *SENATOR ALVARADO: What percentage of this growth does*
11:26:56 8 *Texans of color represent?*

11:26:59 9 *SPEAKER POTTER: A little more than 95 percent of the*
11:27:01 10 *growth can be contributed to people who identify as*
11:27:06 11 *racial or ethnic minorities.*

11:27:08 12 *SENATOR ALVARADO: Okay. Of the nearly 4 million new*
11:27:11 13 *Texans, how many were non-Hispanic-White?*

11:27:16 14 *SPEAKER POTTER: Of the almost 4,187,252 were*
11:27:21 15 *non-Hispanic-White.*

11:27:23 16 (Video and audio stop).

11:27:23 17 BY MR. DUNN:

11:27:24 18 Q. And for clarity of the record, who's the Senator
11:27:26 19 asking the questions here?

11:27:27 20 A. That's Senator Alvarado.

11:27:30 21 Q. And was it the case then, the demographer, Mr. Potter,
11:27:34 22 provided this racial data, on at least growth information, to
11:27:38 23 all of the members of the committee?

11:27:39 24 A. Yes, sir.

11:27:40 25 Q. Then did the committee -- other events happened that

11:27:43 1 day, of course, but did the committee again meet again on
11:27:46 2 September 28th?

11:27:47 3 A. Yes.

11:27:49 4 Q. And at the beginning of that committee, do you recall
11:27:51 5 Senator Huffman again listing her priorities for the map?

11:27:55 6 A. I do.

11:27:58 7 MR. DUNN: This is at Defendants' Exhibit 63, 5:59 to
11:28:03 8 6:45.

11:28:09 9 *SENATOR HUFFMAN: We focussed on complying with all*
11:28:11 10 *applicable law, including the Constitution, the*
11:28:14 11 *Voting Rights Act and the requirements to equalize*
11:28:17 12 *district populations based on the 2020 Census,*
11:28:20 13 *focussed on keeping political subdivisions together,*
11:28:24 14 *keeping communities of interests together, preserving*
11:28:26 15 *the cores of existing districts, creating*
11:28:31 16 *geographically compact districts, addressing partisan*
11:28:33 17 *considerations, protecting incumbents, and when*
11:28:35 18 *possible, honoring reasonable requests made by*
11:28:38 19 *incumbent members. These considerations have also*
11:28:41 20 *guided my approach to what proposed committee*
11:28:43 21 *amendments I'm able to support.*

11:28:45 22 *So the first amendment -- this first...*

11:28:51 23 (Video and audio stop).

11:28:51 24 BY MR. DUNN:

11:28:51 25 Q. Was that the first time that you had heard

11:28:53 1 partisanship mentioned from Senator Huffman as a basis for her
11:28:57 2 plan?

11:28:58 3 A. Yes, it was.

11:28:59 4 Q. What had happened between the first time she had
11:29:01 5 mentioned her priorities into this time?

11:29:04 6 A. Well, our map had dropped. The changes in to Senate
11:29:11 7 District 10 continued to occur.

11:29:12 8 Q. Had Senator Huffman heard from a number witnesses
11:29:15 9 during the committee?

11:29:15 10 A. She heard hours of testimony from people in Senate
11:29:19 11 District 10.

11:29:19 12 Q. And we've heard a bit of that in terms of these
11:29:22 13 experts that came, but describe generally what the other
11:29:24 14 testimony was like?

11:29:25 15 A. Well, it was largely people who were expressing
11:29:38 16 they're thought that minority votes were being diluted, that
11:29:44 17 African-American and Hispanic and Asian voters were being
11:29:49 18 disenfranchised by the changes of this map, that we were
11:29:53 19 cracking apart areas of minority concentration, and half of
11:29:58 20 those were being submerged into -- or a portion of those were
11:30:03 21 being submerged into Senate District 9, Senator Kelly Hancock's
11:30:09 22 district, and the southern portion of Tarrant County was being
11:30:13 23 submerged into those seven rural, highly Republican, highly
11:30:18 24 Anglo populations, which to the voters of Tarrant County, to the
11:30:24 25 Hispanic and African-American and Asian voters of Tarrant

11:30:28 1 County, would leave them with no voice at the ballot box.

11:30:32 2 Q. Were there a number of witnesses who came forward and
11:30:34 3 made comments similar to those that you've just described --

11:30:34 4 A. Yes, sir.

11:30:38 5 Q. -- with regards to Senate District 10?

11:30:39 6 A. Yes, sir.

11:30:39 7 Q. Now do you recall you had a discussion with Senator
11:30:42 8 Huffman in this committee meeting about why you got changes
11:30:46 9 because you were within deviation?

11:30:48 10 A. Yes, sir.

11:30:49 11 MR. DUNN: This is Defendants' 63, 20:14 to 21:05.
11:30:49 12 (Video and audio start).

11:31:00 13 *SENATOR HUFFMAN: Under the fifth amendment proposes*
11:31:01 14 *changes to multiple districts in the DFW area. In*
11:31:04 15 *testimony before this committee, Senator Powell*
11:31:06 16 *argued that we should not make changes to the*
11:31:11 17 *existing SD-10 because it has close to ideal total*
11:31:12 18 *population as currently configured, but this does not*
11:31:16 19 *account for the neighboring districts, including, for*
11:31:20 20 *instance, SD-8, which was overpopulated by 57,955;*
11:31:27 21 *SD-12, which was overpopulated by 146,201 or SD-30,*
11:31:33 22 *which was overpopulated by 87,087 people. Shifts*
11:31:38 23 *throughout the DFW area needed to account for this*
11:31:40 24 *growth. Based on this and other redistricting*
11:31:44 25 *objectives I discussed earlier, I proposed changes to*

11:31:48 1 SD-10.

11:31:49 2 (Video and audio stop).

11:31:49 3 BY MR. DUNN:

11:31:49 4 Q. Now what is your response to Senator Huffman's claim
11:31:52 5 that changes needed to be made to Senate District 10 to balance
11:31:56 6 population?

11:31:56 7 A. Well, actually, I don't believe that's true.

11:31:58 8 Q. Why not?

11:31:59 9 A. Those changes could have occurred within -- within the
11:32:02 10 senate districts that were overpopulated and underpopulated.
11:32:06 11 They could have been absorbed by adjoining districts that were
11:32:13 12 underpopulated or overpopulated, and it didn't need to crack
11:32:18 13 apart those minority populations, in order to draw in a map in
11:32:30 14 which Senate District 10 continues to, in effect, act as a
11:32:38 15 coalition crossover district. Those changes could've been made
11:32:43 16 easily.

11:32:43 17 Q. Were there plans proposed during the debates that
11:32:47 18 balanced the population out in West Texas and the Panhandle and
11:32:51 19 left Senate District 10 alone?

11:32:53 20 A. Yes.

11:32:53 21 Q. Now, after -- the committee voted on the plan, I
11:32:57 22 assume?

11:32:57 23 A. Yes.

11:32:58 24 Q. And did it pass?

11:32:59 25 A. Yes, it did.

11:33:00 1 Q. And then the Senate floor debate started on October
11:33:06 2 the 4th. Does that sound right to you?

11:33:07 3 A. Yes.

11:33:07 4 Q. And were you there for that?

11:33:09 5 A. Yes, I was.

11:33:10 6 Q. At the beginning of the Senate floor debate, did
11:33:12 7 Senator Huffman again lay out her priorities that she alleged to
11:33:16 8 follow for the bill?

11:33:17 9 A. She did.

11:33:18 10 MR. DUNN: Defendants' Exhibit 65, :48 to 1:50.

11:33:18 11 (Video and audio start).

11:33:26 12 *SENATOR HUFFMAN: Ms. President and Members:*

11:33:28 13 *Members, this is the Senate Bill, which draws our*
11:33:34 14 *new lines for the entire Senate. We're going to call*
11:33:37 15 *this -- it's officially called Plan S2130, if you're*
11:33:43 16 *looking in District Viewer. This Plan was developed*
11:33:45 17 *after the committee heard many hours of public*
11:33:47 18 *testimony and after I listened to each members*
11:33:51 19 *priorities and input about their respective*
11:33:54 20 *districts.*

11:33:55 21 *My goals and priorities in developing this*
11:33:58 22 *proposed Plan, included, first and foremost,*
11:34:01 23 *following all applicable law, equalizing population*
11:34:04 24 *across districts, preserving political subdivisions*
11:34:09 25 *and communities of interest, when possible,*

11:34:11 1 *preserving the cores of previous districts to the*
11:34:14 2 *extent possible, avoiding pairing incumbent members,*
11:34:19 3 *achieving geographic compactness and accommodating*
11:34:24 4 *incumbent priorities to the extent that I could.*

11:34:24 5 *I also...*

11:34:28 6 (Video and audio stop).

11:34:28 7 BY MR. DUNN:

11:34:28 8 Q. In that list of priorities, did Senator Huffman
11:34:33 9 mention partnership?

11:34:35 10 A. She, did not.

11:34:36 11 Q. Was there a discussion where you learned the
11:34:39 12 Lieutenant Governor was involved in drawing lines?

11:34:41 13 A. Yes.

11:34:43 14 MR. DUNN: This is Defendants' Exhibit 65, 7:31
11:34:48 15 through 7:57.

11:34:48 16 (Video and audio start).

11:34:52 17 *SENATOR POWELL: Anyone besides Anne Mackin and Sean*
11:34:55 18 *Opperman and you provide input on the boundaries of*
11:34:58 19 *Senate District 10?*

11:35:00 20 *SENATOR HUFFMAN: Occasionally, the Lieutenant*
11:35:02 21 *Governor would come in, but very rarely came in once*
11:35:04 22 *or maybe two or three times during the entire*
11:35:06 23 *process, as I'm sure any lieutenant governor in the*
11:35:09 24 *history of Texas would took -- take an interest in*
11:35:12 25 *the redrawing of Senate redistricting maps.*

11:35:16 1 (Video and audio stop).

11:35:16 2 BY MR. DUNN:

11:35:16 3 Q. And your question there, were you specifically asking
11:35:18 4 about Senate District 10 lines?

11:35:21 5 A. Yes.

11:35:21 6 Q. And was the name that came to Senator Huffman's memory
11:35:27 7 and that she spoke was that the Lieutenant Governor would come
11:35:28 8 in and out of the room occasionally?

11:35:31 9 A. Yes, it was.

11:35:31 10 Q. Now did you have a discussion with Senator Huffman
11:35:34 11 about where the idea came from to make changes to Senate
11:35:38 12 District 10?

11:35:38 13 A. I did.

11:35:40 14 MR. DUNN: Defendants' Exhibit 65, 9:02 to 9:12.

11:35:40 15 (Video and audio start).

11:35:50 16 *SENATOR POWELL: Did anyone ever suggest to you that*
11:35:53 17 *SD-10 be expanded beyond Tarrant County?*

11:35:57 18 *SENATOR HUFFMAN: Not that I recall.*

11:35:59 19 (Video and audio stop).

11:35:59 20 BY MR. DUNN:

11:35:59 21 Q. What did you make of Senator Huffman's statement
11:36:03 22 there?

11:36:04 23 A. Well, I thought it was incredulous.

11:36:08 24 Q. Why?

11:36:10 25 A. That no one ever suggested that she expand Senate

11:36:16 1 District 10 beyond the boundaries of Tarrant County, yet, she
11:36:20 2 cracked it in half and submerged the minority populations with
11:36:26 3 heavily rural districts to the south and a highly Anglo area to
11:36:33 4 the north.

11:36:34 5 Q. Does the Texas Legislature typically pass legislation
11:36:39 6 without any interest group or citizen asking for it?

11:36:42 7 A. No.

11:36:42 8 Q. Do you recall a discussion on the floor about what
11:36:47 9 printed maps were available?

11:36:49 10 A. Yes, I do.

11:36:50 11 MR. DUNN: This is Defendants' Exhibit 65, 12:15 to
11:36:56 12 12:58.

11:36:56 13 (Video and audio start).

11:37:01 14 *SENATOR POWELL: At the September 24th hearing, you*
11:37:03 15 *introduced the Senate Plan by reading allowed this*
11:37:06 16 *written and prepared remark, kind of like you did*
11:37:07 17 *here today; is that correct?*

11:37:10 18 *SENATOR HUFFMAN: I don't recall, but I assume I*
11:37:12 19 *probably did, yes.*

11:37:14 20 *SENATOR POWELL: Well, you said the following, and I*
11:37:15 21 *am going to quote this from your comments.*

11:37:18 22 *Quote: My goals and priorities in developing*
11:37:21 23 *these proposed plans include first and foremost*
11:37:25 24 *abiding by of all applicable law, equalizing*
11:37:29 25 *population across districts, preserving political*

11:37:33 1 *subdivisions and communities of interest, when*
11:37:36 2 *possible, preserving the cores of previous districts*
11:37:40 3 *to the extent possible, avoiding pairing incumbent*
11:37:47 4 *members, achieving geographic compactness, when*
11:37:50 5 *possible, and accommodating incumbent priorities,*
11:37:55 6 *also, when possible. End quote.*
11:37:58 7 *These were the goals that you followed in drawing*
11:38:01 8 *the districts; is that correct?*
11:38:03 9 SENATOR HUFFMAN: *Legally speaking, yes.*
11:38:03 10 (Video and audio stop).
11:38:05 11 MR. DUNN: So, to correct the record, I must have
11:38:06 12 accidentally deleted the maps portion and instead we played
11:38:10 13 Defendants' Exhibit 65, 17:02 to 18:09.
11:38:10 14 BY MR. DUNN:
11:38:15 15 Q. You asked Senator Huffman again about her priorities
11:38:18 16 for the map; is that right?
11:38:18 17 A. That's right.
11:38:19 18 Q. Was there any mention in that exchange in her response
11:38:21 19 about partnership?
11:38:22 20 A. No, there was not.
11:38:26 21 Q. Okay.
11:38:26 22 MR. SWEETEN: Your Honor, that misstates the record.
11:38:29 23 She just said partisanship. Objection.
11:38:33 24 THE COURT: Mr. Dunn?
11:38:35 25 MR. DUNN: The record will reflect what it reflects.

11:38:38 1 BY MR. DUNN:

11:38:39 2 Q. There was a discussion also had about the 2012 court
11:38:42 3 decision; is that right?

11:38:42 4 A. I'm sorry. Could you please ask the question again.

11:38:49 5 Q. Sure. There was a discussion about the 2012 court
11:38:51 6 decision about Senate District 10?

11:38:52 7 A. Yes.

11:38:52 8 MR. DUNN: Oops.

11:39:01 9 This is 23:37 to 24:36 of Defendants' Exhibit 65.

11:39:01 10 (Video and audio start).

11:39:11 11 *SENATOR POWELL: And you have you read the 2012*

11:39:13 12 *preclearance decision from the D.C. Federal Court in*
11:39:15 13 *the Texas v. United States case?*

11:39:19 14 *SENATOR HUFFMAN: Have I read it? I probably have in*
11:39:22 15 *the past. I don't want to say definitively, because*
11:39:25 16 *I don't recall if it's one I read it.*

11:39:34 17 *SENATOR POWELL: Well, I would adhere that I provided*
11:39:36 18 *a copy of that decision to you when we met to preview*
11:39:39 19 *or proposed map; is that correct?*

11:39:43 20 *SENATOR HUFFMAN: I recall you handing me a legal*
11:39:46 21 *document, yes.*

11:39:47 22 *SENATOR POWELL: And you were on the Redistricting*
11:39:49 23 *Committee and voted to permanently adopt the*
11:39:52 24 *Court-ordered Plan; is that correct?*

11:39:55 25 *SENATOR HUFFMAN: Are you talking back in 20- -- yes,*

11:39:56 1 *I was on the Redistricting Committee last time it*
11:40:00 2 *came before the Senate that year, yes.*
11:40:02 3 *SENATOR HUFFMAN: And you voted to adopt the*
11:40:02 4 *Court-ordered Plan?*
11:40:05 5 *SENATOR HUFFMAN: I did vote for the map, yes, I did.*
11:40:09 6 *(Video and audio stop).*
11:40:09 7 BY MR. DUNN:
11:40:10 8 Q. What did you make of Senator Huffman not recalling the
11:40:14 9 2012 decision you provided?
11:40:15 10 A. Well, I think that's an incredible statement. I
11:40:19 11 don't -- having served on the 2011 Restricting Committee, and we
11:40:29 12 had provided that document to her. I believe, we handed it to
11:40:34 13 her in person and again by email. It had been discussed at
11:40:42 14 length during the entire redistricting process. And I believe
11:40:48 15 that a prudent committee chairman of redistricting would want to
11:40:55 16 know all the facts. I believe that because of the course of her
11:41:00 17 service, she would have read that.
11:41:02 18 Q. Do you recall a discussion with Senator Huffman about
11:41:05 19 whether or not the core of districts had been preserved?
11:41:08 20 A. That's right.
11:41:09 21 MR. DUNN: This is Defendants' Exhibit 65, 37:52 to
11:41:13 22 38:49.
11:41:13 23 *(Video and audio start).*
11:41:18 24 *SENATOR POWELL: All right. Then I'm going to move on*
11:41:20 25 *to your criteria in preserving the core of previous*

11:41:24 1 *districts.*

11:41:26 2 *SENATOR HUFFMAN: Okay.*

11:41:27 3 *SENATOR POWELL: Brown, Callahan, Shackelford,*

11:41:29 4 *Stephens, Palo Pinto, Parker and Johnson counties are*

11:41:32 5 *not part of core of the existing Senate District 10;*

11:41:37 6 *is that correct?*

11:41:37 7 *SENATOR HUFFMAN: They're new areas to Senate District*

11:41:40 8 *10, yes.*

11:41:41 9 *SENATOR POWELL: And so how does adding these seven*

11:41:44 10 *rural counties serve your goal of preserving the core*

11:41:49 11 *of Senate District 10?*

11:41:49 12 *SENATOR HUFFMAN: The core is still there in Senate*

11:41:52 13 *District 10. I believe your home is in Senate*

11:41:55 14 *District 10, is it not, Senator Powell? I'm pretty*

11:41:58 15 *sure you believe you lived in the heart and soul of*

11:42:00 16 *Senate District 10, so your -- the core in my belief*

11:42:02 17 *is still there. It is a Tarrant County based Senate*

11:42:02 18 *District.*

11:42:11 19 *SENATOR POWELL: With seven rural counties added to*

11:42:14 20 *that urban area?*

11:42:14 21 *SENATOR HUFFMAN: Correct.*

11:42:14 22 *(Video and audio stop).*

11:42:14 23 BY MR. DUNN:

11:42:15 24 Q. What is your response to Senator Huffman's claim that

11:42:16 25 the core had been retained in your district?

11:42:19 1 A. Well, it absolutely had not. The heart of the
11:42:25 2 district, the populations to the north of downtown Fort Worth
11:42:34 3 had been cracked out of the district and submerged in Senate
11:42:40 4 District 9, and the southern portion into those counties out to
11:42:44 5 the west and to the south. And I think it's inconsequential
11:42:47 6 where I live in the district. That doesn't make it the heart of
11:42:53 7 Senate District 10. The heart of Senate District 10 are the
11:42:56 8 voters who reside in that district.

11:43:02 9 Q. Did you also have a conversation with Senator Huffman
11:43:06 10 about the compactness and how compactness was or wasn't met?

11:43:08 11 A. I did.

11:43:09 12 MR. DUNN: Defendants' Exhibit 65, 40:45 to 41:32.

11:43:09 13 (Video and audio start).

11:43:18 14 *SENATOR POWELL: Looking at the map, would you assess*
11:43:21 15 *that Senate District 10 in its current configuration*
11:43:25 16 *is more compact than an SD-10 that goes nearly to*
11:43:31 17 *Abilene and all the way to Brownwood, is that more*
11:43:35 18 *compact than SD-10 is today?*

11:43:38 19 *SENATOR HUFFMAN: It depends on how you define*
11:43:41 20 *compactness and what the goals of the redistricting*
11:43:43 21 *process were, how much population you needed, where*
11:43:46 22 *you could find the population, other incumbents*
11:43:50 23 *surrounding you and their interests had to be taken*
11:43:54 24 *into account as well.*

11:43:56 25 *SENATOR POWELL: Even if you didn't need any*

11:43:58 1 *population?*

11:43:58 2 *SENATOR HUFFMAN: Pardon?*

11:43:58 3 *SENATOR POWELL: Even if you didn't need any*
11:43:58 4 *population?*

11:44:00 5 *SENATOR HUFFMAN: Well, we believed you needed*
11:44:01 6 *population.*

11:44:02 7 *SENATOR POWELL: Well, let's move on.*

11:44:04 8 *SENATOR HUFFMAN: Okay.*

11:44:07 9 *(Video and audio stop).*

11:44:07 10 BY MR. DUNN:

11:44:08 11 Q. Based on the information you had been provided by TLC,
11:44:12 12 did your district need population at that point?

11:44:14 13 A. It did not.

11:44:30 14 Q. And did you have again have a discussion with Senator
11:44:33 15 Huffman about the criteria she was following with regard to the
11:44:36 16 map?

11:44:36 17 A. Yes, we did.

11:44:37 18 MR. DUNN: Defendants' Exhibit 65, 41:33 to 42:45.

11:44:46 19 *SENATOR POWELL: At the September 28th Committee*
11:44:48 20 *hearing, you said you were voting against my*
11:44:50 21 *amendment, sponsored by Senate Alvarado, to restore*
11:44:56 22 *SD-10 in order to accommodate your redistricting*
11:44:59 23 *criteria. So which of the redistricting criteria,*
11:45:03 24 *that we just discussed, were you referring to when he*
11:45:07 25 *said that?*

11:45:10 1 *SENATOR HUFFMAN: All of them.*

11:45:10 2 *SENATOR POWELL: All of them.*

11:45:13 3 *Which redistricting criteria do you think would*
11:45:17 4 *serve that voting against that district.*

11:45:20 5 *SENATOR HUFFMAN: I am sorry? Which --*

11:45:21 6 *SENATOR POWELL: Which redistricting criteria did you*
11:45:23 7 *think was served by voting against my amendment --*

11:45:26 8 *SENATOR HUFFMAN: All of them.*

11:45:27 9 *SENATOR POWELL: -- to keep SD-10 the same?*

11:45:31 10 *SENATOR HUFFMAN: All of them were considered.*

11:45:33 11 *SENATOR POWELL: All of them.*

11:45:33 12 *Well, what is the main reason then that you*
11:45:35 13 *changed SD-10 from its current configuration, where*
11:45:38 14 *it's based solely in Tarrant County and largely in*
11:45:41 15 *urban areas of Fort Worth and Arlington, to one that*
11:45:45 16 *includes now seven counties -- seven additional*
11:45:48 17 *counties?*

11:45:49 18 *SENATOR HUFFMAN: All of the redistricting priorities*
11:45:50 19 *that I have previously stated, that you have stated as well.*

11:45:50 20 *(Video and audio stop).*

11:45:58 21 MR. DUNN:

11:45:58 22 Q. Now Senator Huffman mentions all of them and you make
11:46:05 23 a face. What is your response to that claim of hers?

11:46:06 24 A. Well, I fundamentally disagree with that on its face.
11:46:12 25 Look at the map. Look at the populations that are cracked out

11:46:16 1 of the map and the populations in which they're submerged.

11:46:22 2 Would they be talking about communities of interest or
11:46:25 3 whether you're talking about incumbent issues, whether you're
11:46:30 4 talking about compactness, it is clear that this is not a
11:46:34 5 compact map, you know, to go from serving members of a district
11:46:43 6 that are in one county to now driving nearly to Abilene or
11:46:50 7 nearly to Brownwood in trying to connect those communities of
11:46:55 8 interest is complicated, as we've heard on here. Those are more
11:47:02 9 agrarian societies that are now merged with a very urban
11:47:07 10 district that -- I said this before -- Fort Worth has over
11:47:14 11 85,000 students in their district, Mansfield some 55,000, I
11:47:17 12 believe, Arlington even larger than that, so we're talking about
11:47:23 13 going from serving a district that has very large urban
11:47:29 14 populations, very large school districts, highly related to
11:47:36 15 transportation and entertainment and to areas that are more
11:47:43 16 agrarian society. They're not communities of interest.

11:47:48 17 Q. Do you recall Senator Huffman on the floor discussing
11:47:52 18 what use she made of the racial shade maps?

11:47:56 19 A. Yes.

11:47:58 20 MR. DUNN: This is Defendants' Exhibit 65, 44:28 to
11:48:03 21 46:07.

11:48:03 22 (Video and audio start).

11:48:09 23 SENATOR POWELL: When we met, before you were released
11:48:11 24 the proposed Senate Plan, I showed you a map of SD-10
11:48:17 25 showing colored shading. In fact, I showed you a

11:48:20 1 *number of maps that were shading maps, where the*
11:48:23 2 *district minority populations were located, and you*
11:48:28 3 *initialed every single one of those maps with the*
11:48:31 4 *date on that, correct?*

11:48:33 5 SENATOR HUFFMAN: *Senator Powell, we're going to --*
11:48:36 6 *we're going to -- I'm going to take you to task on*
11:48:37 7 *this one, because you and I both know I made it*
11:48:39 8 *perfectly clear that I was not considering racially*
11:48:43 9 *data. You sat down and you handed me a document. I*
11:48:47 10 *glanced at it for less than a second. I did not know*
11:48:51 11 *what it was. When I turned the page, I realized it*
11:48:54 12 *had racially data. I turned it over flat, and I*
11:48:58 13 *said, I will not look at this. You had four*
11:49:01 14 *others -- no, I'm going to finish -- and I had you*
11:49:04 15 *initial it, I initialled it. I put it into a folder.*
11:49:09 16 *My staff did not look at it. I did not look at it.*
11:49:13 17 *And I turned back -- that folder over to the Attorney*
11:49:16 18 *General's office okay. Okay?*

11:49:18 19 *You're the one who gave it to me.*

11:49:18 20 SENATOR POWELL: *That is correct.*

11:49:21 21 SENATOR HUFFMAN: *I did not look at it. I did not*
11:49:24 22 *read it and I did not glean one bit of information*
11:49:27 23 *from it.*

11:49:27 24 SENATOR POWELL: *All right.*

11:49:28 25 SENATOR HUFFMAN: *So I'm trying to be very transparent*

11:49:33 1 *here, completely honest, but you need to be so, too.*

11:49:37 2 *SENATOR POWELL: Oh, I am being honest.*

11:49:38 3 *SENATOR HUFFMAN: Okay. Well --*

11:49:38 4 *SENATOR POWELL: I am being honest --*

11:49:39 5 *SENATOR HUFFMAN: -- I just want to make it clear.*

11:49:40 6 *Thank you, Ms. Powell.*

11:49:40 7 *SENATOR POWELL: -- I absolutely did lay that in front*
11:49:40 8 *of you --*

11:49:40 9 *SENATOR HUFFMAN: Absolutely. Thank you.*

11:49:43 10 *SENATOR POWELL: -- and we dated them and initialed*
11:49:44 11 *them, both of them -- both of us did.*

11:49:47 12 *SENATOR HUFFMAN: Correctly, yes.*

11:49:47 13 *SENATOR POWELL: All right.*

11:49:48 14 *(Video and audio stop).*

11:49:48 15 BY MR. DUNN:

11:49:49 16 Q. Do you recall that exchange of maps that Senator

11:49:53 17 Huffman has described it?

11:49:54 18 A. Certainly, yes.

11:49:55 19 Q. Do you recall the flipping over the pages quickly the

11:49:59 20 initialing, the not looking at it as she described it?

11:50:03 21 A. What I recall of that event is that I handed her each

11:50:08 22 map individually. I read the title of the map. I told her what

11:50:13 23 the shading contained in each map. Then she took -- she had all

11:50:19 24 of the maps together, and then she said, let's each initial

11:50:23 25 these maps, and she initialed them and handed that back to me

11:50:28 1 and I initialed them. That entire transaction was far more than
11:50:34 2 one second.

11:50:36 3 Q. Was it clear to you that she.

11:50:38 4 MR. SWEETEN: Can you give the range of the clip you
11:50:43 5 just played?

11:50:43 6 MR. DUNN: Sure. Defendants' Exhibit 65, 44:28 to
11:50:49 7 46:07.

11:50:54 8 MR. SWEETEN: Okay.

11:50:55 9 BY MR. DUNN:

11:50:56 10 Q. Was it clear to you that Senator Huffman had time to
11:50:57 11 see and visualize and understand each of those maps?

11:51:02 12 A. Yes.

11:51:04 13 Q. Now there was another discussion about case law with
11:51:08 14 Senator Huffman on the Senate floor about the cases she was
11:51:13 15 relying on. Do you recall that?

11:51:14 16 A. Yes.

11:51:14 17 MR. DUNN: This is Defendants' Exhibit 65, 52:43, to
11:51:23 18 52:58.

11:51:23 19 (Video and audio start).

11:51:26 20 *SENATOR POWELL: Powell. You've read the Cooper v.*
11:51:29 21 *Harris decision from the Supreme Court; is that*
11:51:29 22 *correct?*

11:51:31 23 *SENATOR HUFFMAN: No. I might have, I just don't know*
11:51:33 24 *the names, so I'm not going to say, yes, and pretend*
11:51:37 25 *to be an expert, because I don't know that specific*

11:51:40 1 case.

11:51:40 2 (Video and audio stop).

11:51:41 3 BY MR. DUNN:

11:51:41 4 Q. Was *Cooper v. Harris* one of the cases she listed in
11:51:45 5 the committee hearing?

11:51:46 6 A. Yes.

11:51:47 7 Q. What did you make of the fact she wasn't sure if she
11:51:50 8 read them?

11:51:50 9 A. I thought it was disingenuous.

11:51:53 10 Q. Was there a discussion on the floor about whether or
11:51:56 11 not there's the existence of racially polarized voting or RPV in
11:52:02 12 Texas?

11:52:02 13 A. Yes.

11:52:03 14 MR. DUNN: Defendants' Exhibit 65, 52:9 to 53:19.

11:52:03 15 (Video and audio start).

11:52:11 16 *SENATOR POWELL: Are you aware, then, that the courts*
11:52:13 17 *have repeatedly said that voting in Texas is racially*
11:52:17 18 *polarized with Anglo voters mostly supporting*
11:52:22 19 *Republicans and minority voters mostly supporting*
11:52:27 20 *Democrats?*

11:52:27 21 *SENATOR HUFFMAN: I don't know that the courts have*
11:52:30 22 *said that.*

11:52:30 23 (Video and audio stop).

11:52:30 24 BY MR. DUNN:

11:52:34 25 Q. Do you recall when the courts have said that as a

11:52:37 1 nonlawyer?

11:52:38 2 A. Yes.

11:52:38 3 Q. And have they?

11:52:39 4 A. Yes.

11:52:39 5 Q. What did you make about the fact that Senator Huffman
11:52:42 6 was unaware?

11:52:46 7 A. Again, she's the Chairman of Redistricting. She
11:52:51 8 should be aware of all of that and I believe that she is.

11:52:55 9 Q. And then was there a discussion as to whether or not
11:52:58 10 the newly configured Senate District 10 would elect in your
11:53:02 11 election defeat?

11:53:03 12 A. Yes.

11:53:04 13 MR. DUNN: This is Defendants' Exhibit 65, 1:28:11 to
11:53:11 14 1:28:27.

11:53:11 15 (Video and audio start).

11:53:11 16 *MALE SPEAKER: Your plan, I think that we've already*
11:53:19 17 *determined that Senate District 10 would probably not*
11:53:21 18 *be returning Senator Powell; is that accurate?*

11:53:25 19 *SENATOR HUFFMAN: I do not know who the voters of*
11:53:28 20 *Senate District 10 will vote for.*

11:53:28 21 (Video and audio stop)

11:53:32 22 BY MR. DUNN:

11:53:32 23 Q. Now did that make sense to you?

11:53:35 24 A. No.

11:53:37 25 Q. If partisanship was the goal, would you think Senator

11:53:44 1 Huffman would have known or had an expectation of how the
11:53:45 2 district was going to perform?

11:53:46 3 A. I certainly think she would have an idea of what would
11:53:49 4 happen.

11:53:51 5 Q. Now, ultimately, there was a number of amendments
11:54:05 6 processed and then voted on by the Senate; is that right?

11:54:07 7 A. That's right.

11:54:08 8 Q. Those are reflected in the record, but was there a
11:54:11 9 discussion Senator Huffman has about an amendment where she
11:54:14 10 describes the problems with it that related to what you thought
11:54:17 11 were the problems of Senate District 10?

11:54:20 12 A. Yes.

11:54:21 13 MR. DUNN: This is Defendants' Exhibit 69, 3:10 to
11:54:29 14 3:11.

11:54:29 15 (Video and audio start).

11:54:37 16 SENATOR HUFFMAN: *Similarly, with respect to Senate*
11:54:37 17 *District 21, but also in many other areas of the*
11:54:40 18 *state, this proposal is not compact and combines*
11:54:44 19 *communities that have not been jointly represented in*
11:54:47 20 *the Senate in previous years. While...*

11:54:51 21 (Video and audio stop).

11:54:51 22 BY MR. DUNN:

11:54:51 23 Q. Now the explanation that Senator Huffman gives for
11:54:54 24 rejecting this amendment, what did you make of that?

11:54:57 25 A. Well, compared to the new Senate District 10, the map

11:55:06 1 in question was far more compact than SD-10 is it is drawn
11:55:12 2 today.

11:55:13 3 Q. Now, ultimately, the Senate voted on the bill; is that
11:55:17 4 right?

11:55:17 5 A. That's right.

11:55:17 6 Q. And did it pass?

11:55:18 7 A. It did.

11:55:19 8 Q. And did some Democrats vote for the bill?

11:55:26 9 A. They did.

11:55:27 10 Q. Some Democrats put a statement in the record
11:55:28 11 explaining their vote?

11:55:29 12 A. They did.

11:55:29 13 Q. And did anyone else vote against the bill?

11:55:33 14 A. Yes.

11:55:34 15 Q. Who was that?

11:55:34 16 A. Senator Seliger.

11:55:37 17 Q. Did you have anything to do with inducing him to make
11:55:40 18 that vote?

11:55:40 19 A. I did not.

11:55:44 20 Q. Take to you Exhibit 40, Brooks' Exhibit 40.

11:56:03 21 I've zoomed in to a list of senators names that made
11:56:06 22 this statement. Let me know, take as much time as you need
11:56:10 23 there. We can get you a copy.

11:56:23 24 A. All right. Just a list of senators.

11:56:25 25 Q. Does that include the senators -- the democratic

11:56:29 1 senators who voted in favor of the plan?

11:56:31 2 A. Yes, it does.

11:56:32 3 Q. And then if you could just read the last sentence
11:56:45 4 here: To the contrary?

11:56:47 5 A. "To the contrary, we unanimously oppose specific
11:56:51 6 aspects of the plan, most notably, the defamation of Senate
11:56:59 7 District 10.

11:57:01 8 Q. All right. After the Senate passage of the bill moved
11:57:03 9 over to the House for consideration?

11:57:05 10 A. Yes, it did.

11:57:06 11 Q. And did you attend any of the House proceedings?

11:57:08 12 A. I did not.

11:57:09 13 Q. Did you provide some information to the House
11:57:11 14 Committee with respect to the Senate District 10 portion of the
11:57:15 15 plan?

11:57:15 16 A. I did.

11:57:16 17 Q. I'm going to show you what is marked as Exhibit 19?

11:57:53 18 All right. Senator what is Exhibit 19?

11:57:59 19 A. It is the packet of information on Senate District 10.

11:58:04 20 Q. Does it appear to be addressed to all of the House
11:58:07 21 members that members of the House Redistricting Committee?

11:58:10 22 A. Yes, it is.

11:58:11 23 Q. And what were the informations you enclosed?

11:58:13 24 A. I included the maps, the population map for Senate
11:58:22 25 District 10, a copy of the 2012 ruling, a copy of -- I believe a

11:58:33 1 copy of -- and a letter to Chairman Hunter.

11:58:54 2 Q. And then do you also include, in the body of the email
11:58:58 3 itself, the same racial shaded map that you had shared with
11:59:04 4 Senator Huffman?

11:59:04 5 A. Yes, I did.

11:59:05 6 Q. Why did you do this?

11:59:06 7 A. I felt that it was really important for the members of
11:59:12 8 the committee to have all of the data available on Senate
11:59:17 9 District 10, to understand the impact of cracking apart those
11:59:22 10 minority populations and submerging them into rural and
11:59:30 11 Republican counties.

11:59:31 12 Q. Did you receive any response back to this email from
11:59:34 13 the Chair of the committee, Mr. Hunter -- Representative Hunter
11:59:39 14 or any of the other Republicans on the committee?

11:59:42 15 A. No.

11:59:42 16 Q. And when the bill went to the House floor, did you
11:59:46 17 send another correspondence?

11:59:48 18 A. I did.

11:59:51 19 Q. I'm showing you what has been admitted as Brooks'
11:59:54 20 Exhibit 20.

11:59:57 21 Is this the email you sent?

11:59:59 22 A. It is.

11:59:59 23 Q. And it's dated October 14th, 2021?

12:00:04 24 A. Yes, it is.

12:00:05 25 Q. And is it dated -- is it addressed to all of the

12:00:08 1 members of the House?

12:00:09 2 A. It is addressed to all of the members of the House.

12:00:14 3 Q. Are you attaching the same information here that you
12:00:17 4 attached and provided to the House Committee members?

12:00:19 5 A. I did.

12:00:20 6 Q. And again, in the body of the email, do you include
12:00:24 7 the racial shade map?

12:00:26 8 A. Yes, we did.

12:00:28 9 Q. Did you receive any response from the Speaker or
12:00:31 10 Republican members of the House to this communication?

12:00:33 11 A. Not -- not a word.

12:00:34 12 Q. Why did you send this to all of the members of the
12:00:37 13 House?

12:00:37 14 A. Again, I think that it is incumbent on members of the
12:00:42 15 Legislature to be well informed and to have the full knowledge
12:00:46 16 of the impact of a redistricting map like this on minority
12:00:52 17 populations.

12:00:52 18 Q. Had you ever before sent a letter to every member of
12:00:59 19 the Texas House?

12:01:01 20 A. No.

12:01:02 21 Q. Now, transitioning to a different subject, before we
12:01:06 22 went on our break earlier, I showed you an email about enclosing
12:01:11 23 a plan for Mr. Opperman?

12:01:12 24 A. Yes, sir.

12:01:13 25 Q. And that email was dated September 18, 2021, and it

12:01:17 1 showed Senator Opperman announcing a release of the proposed
12:01:20 2 Senate plan. Do you remember that?

12:01:20 3 A. Yes.

12:01:21 4 MR. DUNN: For the record, that was Exhibit 15.

12:01:21 5 BY MR. DUNN:

12:01:24 6 Q. We also discussed the release of the second version of
12:01:26 7 the plan, the night of the September 23rd, before the hearing.
12:01:29 8 Do you recall that?

12:01:30 9 A. I do recall that.

12:01:31 10 Q. I accidentally gave you the wrong date on that email, so
12:01:34 11 I apologize for that. Is it the case that the email we reviewed
12:01:36 12 in Exhibit 15 was the original plan that was emailed not the
12:01:40 13 version that came out the night of the committee hearing?

12:01:43 14 A. Yes.

12:01:43 15 Q. Did you have any -- you or your staff have any advance
12:01:46 16 notice of the plan that came out the night of the committee
12:01:50 17 hearing?

12:01:50 18 A. Not a bit.

12:01:51 19 Q. Now, the Court has heard some testimony about a
12:01:56 20 declaration that Senate Seliger has filed. Are you aware of
12:02:00 21 this?

12:02:01 22 A. I am aware of it.

12:02:02 23 Q. Tell us how that declaration -- you know, how it is
12:02:03 24 that it came signed in your possession?

12:02:05 25 A. My staff asked me if I would give Senator Seliger a

12:02:16 1 call and ask him if he would consider, since he voted against
12:02:19 2 the map, if he would consider signing a declaration. And so I
12:02:25 3 called him and he said, send it to me. And so we sent him a
12:02:34 4 Word document of the declaration. And that was the end of that
12:02:44 5 discussion. Um...

12:02:44 6 Q. Let me pause you there before you get to the rest of
12:02:47 7 it.

12:02:47 8 When you talked to him on the telephone that time, did
12:02:50 9 you have any substantive discussion of what he might say or want
12:02:54 10 him to say?

12:02:55 11 A. I did not.

12:02:55 12 Q. And so was it the sense from your side of the phone
12:02:59 13 call he didn't know, you know, what would be in the proposed
12:03:03 14 declaration?

12:03:03 15 A. No, he didn't.

12:03:04 16 Q. All right. Now what happens next after that?

12:03:06 17 A. And so I emailed him. We emailed him a copy of a Word
12:03:12 18 document that was a declaration about just what had -- what
12:03:18 19 transpired when he voted against the bill.

12:03:20 20 Q. Did you receive any response from him in terms of
12:03:23 21 email?

12:03:23 22 A. No.

12:03:25 23 Q. When did you --

12:03:25 24 A. Not at that time.

12:03:26 25 Q. When did you hear from him, if you did?

12:03:30 1 A. He and I attended a friend's public education banquet.
12:03:40 2 I was receiving an award and he was the M.C. at the banquet.
12:03:45 3 And they seated us next to one another at the banquet. I knew
12:03:52 4 he was going to be there, so I took a Word document with me to
12:03:55 5 the banquet, and I when I walked up to him, he said, I'm going
12:04:00 6 to sign your declaration; I'm going to sign your declaration.

12:04:06 7 MR. SWEETEN: Objection, hearsay.

12:04:09 8 THE COURT: All right. We'll admit it subject to your
12:04:11 9 objection.

12:04:12 10 BY MR. DUNN:

12:04:15 11 Q. What is the significance of having sent him the Word
12:04:15 12 document? Why did you do that? Why did you send him the Word
12:04:19 13 document, originally?

12:04:19 14 A. I sent a Word document in case there was anything in
12:04:23 15 it that he didn't agree with, that he thought was untrue or
12:04:29 16 didn't represent the facts, so he could change it if he wanted
12:04:33 17 to.

12:04:34 18 Q. So returning to the meeting in Waco, when he made
12:04:38 19 those statements you've already described, how is it that you
12:04:41 20 came into a possession of a signed version of the declaration?

12:04:44 21 A. He said, I'm going to sign your declaration, and I
12:04:48 22 said, well, I brought a copy of the one that I emailed you, and
12:04:53 23 he said, great. And so when dinner was over, I pulled that file
12:04:58 24 out of my bag and he signed it and we were done.

12:05:03 25 Q. Now, one final area of inquiry. At your deposition,

12:05:08 1 you were shown a list of the senators that had voted for Senate
12:05:12 2 Bill 4. Do you recall that?

12:05:13 3 A. Yes.

12:05:14 4 Q. And what were you asked to do with that list?

12:05:20 5 A. Ask that again? I am not understanding exactly what
12:05:24 6 I'm answering here.

12:05:25 7 Q. What were you asked to do with the list of Senators?
12:05:28 8 What did the lawyer of the State can you to do when they gave
12:05:32 9 you that list of Senators?

12:05:34 10 A. Oh, they asked me to circle names on that list that I
12:05:43 11 thought had discriminatory intent, I believe.

12:05:43 12 Q. And what did you do in response to that request?

12:05:46 13 A. I think I said that I would not speculate on the
12:05:52 14 motives of my colleagues.

12:05:54 15 Q. Now, as part of -- you're a party to this lawsuit, do
12:05:58 16 you understand that?

12:05:58 17 A. Yes, I do.

12:05:59 18 Q. As part of your request to this Court, are you asking
12:06:02 19 it to find that Senate Bill 4 was adopted with a discriminatory
12:06:05 20 intent?

12:06:06 21 A. I am asking that.

12:06:07 22 Q. Why could you not circle some names on that list?

12:06:14 23 A. As senators, we spend a lot of time together
12:06:18 24 throughout the year, and we develop personal relationships, and
12:06:23 25 that question felt really uncomfortable and kind of ugly to me.

12:06:32 1 It's not my nature to say, to someone, you're a racist, but
12:06:42 2 clearly, throughout the process, the Senate had the benefit of
12:06:49 3 all of the testimony and hearing folks from Senate District 10
12:06:54 4 talk about how this map discriminated against them. And I --
12:07:05 5 its clear that this is discriminatory in its intent and its
12:07:11 6 effect.

12:07:11 7 Q. Senator, one last question. Were you told the truth
12:07:15 8 about the reasons for changes to Senate District 10 at any point
12:07:19 9 in this process?

12:07:20 10 A. No.

12:07:22 11 MR. DUNN: Pass the witness.

12:07:24 12 THE COURT: Mr. Sweeten?

12:07:28 13 SENATOR BEVERLY POWELL,

12:07:28 14 CROSS-EXAMINATION BY THE DEFENSE

12:07:30 15 BY MR. SWEETEN:

12:08:01 16 Q. Good morning, Senator Powell.

12:08:03 17 A. Good morning.

12:08:03 18 Q. I'm Patrick Sweeten. We met last week --

12:08:06 19 A. We did.

12:08:07 20 Q. -- at your deposition.

12:08:09 21 A. We did.

12:08:10 22 Q. I'm going to ask you some questions based on the
12:08:13 23 questions you were asked by counsel.

12:08:15 24 Now, the first thing I want to ask you is the issue of
12:08:22 25 partisanship. Let me get to the right page there.

12:08:28 1 You understood entering the redistricting session that
12:08:34 2 your district might be targeted for political purposes, correct?
12:08:40 3 A. Well, according to Mr. Opperman --
12:08:43 4 Q. It's a yes or no.
12:08:45 5 The question was, you understood entering
12:08:49 6 redistricting that your district might be targeted for political
12:08:53 7 purposes; that's what I asked you.
12:08:56 8 A. Yes.
12:08:56 9 Q. You did know that?
12:08:58 10 A. That it made it, yes.
12:09:00 11 Q. You understood that your district, SD-10, would be
12:09:06 12 targeted because you were a Democrat, correct?
12:09:08 13 A. Yes.
12:09:08 14 Q. You understood that the Texas Senate had Republican
12:09:13 15 majority, correct?
12:09:14 16 A. Yes.
12:09:14 17 Q. You understood and, in fact, that majority is 18/13
12:09:20 18 Republican, correct?
12:09:21 19 A. Yes.
12:09:21 20 Q. You understood that the Texas House had a Republican
12:09:25 21 majority also?
12:09:25 22 A. Yes.
12:09:26 23 Q. And that majority is 85/65 Republican, correct?
12:09:31 24 A. Yes, I think so.
12:09:32 25 Q. You understand that the statewide office holders, the

12:09:36 1 Lieutenant Governor is a Republican, correct?

12:09:38 2 A. Yes.

12:09:39 3 Q. You understood that the governor, Governor Greg
12:09:44 4 Abbott, Republican, correct?

12:09:45 5 A. Yes, sir.

12:09:46 6 Q. Now, I want to ask you about your attorneys in this
12:09:52 7 case. Okay?

12:09:54 8 Now, you are a freshman Senator and we'll go over that
12:09:59 9 for a bit. That's what you are?

12:10:00 10 A. That's what I am.

12:10:02 11 Q. And you would agree with me that you retained voting
12:10:07 12 rights attorneys, in January of 2021, to provide you
12:10:13 13 redistricting advice, correct?

12:10:16 14 A. Yes.

12:10:17 15 Q. Okay. And those attorneys include the following
12:10:24 16 individuals: Jerry Hiebert, correct?

12:10:27 17 A. Not in -- not in January --

12:10:29 18 Q. Okay.

12:10:30 19 A. -- no.

12:10:30 20 Q. Well, let's talk about it.

12:10:32 21 From January throughout the redistricting process, you
12:10:36 22 had redistricting attorneys that worked for you, correct?

12:10:39 23 A. Yes.

12:10:39 24 Q. That advised you, correct?

12:10:41 25 A. Yes.

12:10:42 1 Q. And those include Max Rene Hicks, a long time
12:10:47 2 redistricting attorney?

12:10:48 3 A. Yes.

12:10:48 4 Q. He provided you legal advice?

12:10:50 5 A. We -- we retained him around January of 2021.

12:10:54 6 Q. That includes Jerry Hiebert, who also is a voting
12:10:58 7 rights attorney, correct?

12:10:59 8 A. Not to my knowledge, in January.

12:11:01 9 Q. My question --

12:11:02 10 A. -- later on, yes.

12:11:03 11 Q. My question was, from January to October of 2021 --

12:11:08 12 A. Oh, okay.

12:11:09 13 Q. -- did you obtain legal advice from Jerry Hiebert?

12:11:13 14 A. Yes.

12:11:13 15 Q. Okay. During that same time period, did you obtain
12:11:17 16 legal advice from Mr. Gaber, sitting at the table?

12:11:20 17 A. Yes.

12:11:20 18 Q. During that time period, did you obtain legal advice
12:11:24 19 from Mr. Dunn sitting at the table?

12:11:26 20 A. Yes.

12:11:26 21 Q. And that's through the session?

12:11:27 22 A. Yes.

12:11:28 23 Q. That's when you're planning this cross-examination of
12:11:32 24 Senator Huffman on floor?

12:11:34 25 A. Yes.

12:11:35 1 Q. It's throughout this lawsuit?

12:11:36 2 A. Throughout the lawsuit.

12:11:38 3 Q. A lawsuit you filed eight days after the Governor
12:11:43 4 signed SB4, correct?

12:11:49 5 A. Yes.

12:11:49 6 Q. Now, I want to ask you, who is paying for your
12:11:54 7 attorneys in this litigation?

12:11:55 8 A. I am.

12:11:56 9 Q. Is anyone else?

12:11:59 10 A. Not so far.

12:12:00 11 Q. Okay. Have you asked someone else to pay those fees
12:12:04 12 or assist you with that?

12:12:05 13 A. No. I've raised funds in my campaign account, but I
12:12:11 14 have not.

12:12:12 15 Q. Have you been given donations in your campaign account
12:12:15 16 for that purpose?

12:12:16 17 A. There are some, yes.

12:12:17 18 Q. And who gave you those?

12:12:19 19 A. Senator Johnson gave us a donation and I am not aware
12:12:30 20 of exactly who else that I'm --

12:12:32 21 Q. That's all you can tell the Court?

12:12:34 22 A. That's right. I'm not aware of who else.

12:12:36 23 Q. How long did you prepare for the committee
12:12:47 24 examinations that you did of Senator Huffman?

12:12:54 25 A. Maybe parts of day or so.

12:13:00 1 Q. And which attorneys assisted you with that?

12:13:04 2 A. My chief of staff assisted me with that.

12:13:07 3 Q. And which attorneys in addition to your chief of
12:13:10 4 staff?

12:13:10 5 A. Just my chief of staff.

12:13:13 6 Q. Do you know if your chief of staff liaised with
12:13:17 7 your -- the four attorneys -- with any of the four attorneys
12:13:21 8 that we discussed earlier?

12:13:25 9 A. I'm not aware.

12:13:26 10 Q. Okay.

12:13:26 11 A. I assume so.

12:13:26 12 Q. You assume so, that's yes?

12:13:29 13 A. I know personally my chief of staff provided me with
12:13:32 14 that.

12:13:32 15 Q. And you assume that your chief of staff liaised with
12:13:37 16 your attorneys that were advising you on redistricting, correct?

12:13:41 17 A. Yes.

12:13:42 18 Q. Okay. So I want to talk to you about the Kel Seliger
12:13:56 19 affidavit.

12:13:58 20 A. Okay.

12:13:58 21 Q. First of all, Mr. Seliger -- it sounds like you
12:14:05 22 provided Mr. Seliger an affidavit, that was used in this case as
12:14:12 23 Defendants' Exhibit 1, at a function in Waco, correct?

12:14:15 24 A. No, I emailed it to him.

12:14:17 25 Q. Okay. First you emailed it to him and then to obtain

12:14:21 1 the signature, you show up at the event, correct?

12:14:25 2 A. Yes.

12:14:26 3 Q. Who drafted the affidavit?

12:14:28 4 A. My chief of staff.

12:14:29 5 Q. And with whose assistance?

12:14:34 6 A. My chief of staff.

12:14:36 7 Q. Senator Powell, the function that occurred, what we're
12:14:39 8 talking about, was in Waco on November 18th, is that what your
12:14:43 9 testimony was?

12:14:44 10 A. I think so.

12:14:45 11 Q. Now, I remember this date, and maybe you don't, but on
12:14:49 12 November 23rd, the night before Thanksgiving, was the night that
12:14:52 13 the preliminary injunction that you filed in this case was
12:14:55 14 filed. Do you know that?

12:14:57 15 A. I don't have the exact date, no.

12:15:00 16 Q. Okay. And you're saying that your chief of staff, by
12:15:04 17 himself, crafted the affidavit that was then -- you obtained a
12:15:09 18 signature for, and then it was utilized in a filing with this
12:15:13 19 Court, that's your testimony?

12:15:13 20 A. It is.

12:15:14 21 Q. Did he have assistance?

12:15:17 22 A. He may have. I don't know.

12:15:19 23 Q. Mr. Seliger -- now, it's also the case, isn't it, that
12:15:28 24 in your deposition I asked you if you had received the e-mails
12:15:34 25 from Mr. Seliger? Do you recall that question?

12:15:37 1 A. Yes.

12:15:37 2 Q. Your initial answer in sworn testimony in that
12:15:41 3 deposition was no?

12:15:42 4 A. I do recall that.

12:15:43 5 Q. And you recall the next thing was we pulled the email
12:15:47 6 out from Mr. Seliger with the affidavit sent to you, right?

12:15:50 7 A. Yes, you did.

12:15:51 8 Q. And you remembered it, didn't you?

12:15:53 9 A. I did.

12:15:54 10 Q. Okay. Now, I want to pull up --

12:15:57 11 MR. SWEETEN: If we could, page 65, line 18 of the
12:16:01 12 deposition, of Senator Powell.

12:16:17 13 And if you could zero in page 65, line 18, to page 66,
12:16:24 14 line 4. Let's start here.

12:16:24 15 BY MR. SWEETEN:

12:16:27 16 Q. Now, this is what Mr. Dunn was speaking with you
12:16:31 17 about, Senator Powell, on his last set of questions, correct?
12:16:38 18 And I handed you a list of those senators that voted for the
12:16:43 19 bill, correct?

12:16:43 20 A. That's correct.

12:16:44 21 Q. And you recall in the deposition that at one of the
12:16:47 22 first instructions that I gave you was that you are under oath?

12:16:51 23 A. Yes.

12:16:51 24 Q. Another of the instructions that I gave you was that
12:16:55 25 this could be played to the Court, right?

12:16:57 1 A. Yes.

12:16:58 2 Q. Okay. Told you both of those things, all right,
12:17:01 3 handed you the list of the 20 senators that voted for the bill,
12:17:06 4 and then when you --

12:17:07 5 And so I say: "Is there a person on the yeas list,
12:17:12 6 and I'm going to give you a pen, and if you want to circle, is
12:17:16 7 there any person here that you believe acted with a purpose of
12:17:19 8 intentionally --

12:17:19 9 MR. SWEETEN: And can we go on to the next page?

12:17:19 10 BY MR. SWEETEN:

12:17:24 11 Q. -- discriminating in passing SB4?"

12:17:27 12 Answer: "I would not speculate as to the motivations
12:17:29 13 of my colleagues."

12:17:30 14 That was your sworn testimony, wasn't it?

12:17:32 15 A. Yes, sir.

12:17:33 16 Q. All right. Now I want to talk to you a little bit
12:17:45 17 about some meetings that you indicated that you had with Senator
12:17:53 18 Huffman's office. Okay.

12:17:55 19 Now, first of all, we had testimony, and I think you
12:17:58 20 mentioned the testimony, that there was an initial meeting
12:18:03 21 with -- not with Senator -- not with Senator Huffman and not
12:18:07 22 with you in the room, but between one of your staffers
12:18:13 23 Mr. Svatora, correct?

12:18:14 24 A. Yes.

12:18:14 25 Q. Okay. That is something that you've mentioned, and

12:18:18 1 you would agree with me that that occurred a year and a half
12:18:22 2 before the session -- the redistricting session, the third
12:18:28 3 called session, correct?

12:18:28 4 A. Yes.

12:18:29 5 Q. You weren't there?

12:18:30 6 A. No, I was not.

12:18:32 7 Q. All right. You then recounted a second meeting with
12:18:38 8 Senator Huffman, and I think at that time you indicated you had
12:18:41 9 a picture of a map that you showed this Court. Do you remember
12:18:45 10 that?

12:18:45 11 A. Yes.

12:18:45 12 Q. Okay. And you would agree with me that that picture
12:18:49 13 was simply -- that wasn't racial data or anything else -- it was
12:18:56 14 simply a map that showed the over-underpopulation of existing
12:19:01 15 Senate District 10, correct?

12:19:02 16 A. It had statistics about the racial makeup of Senate
12:19:09 17 District 10 on it. I don't recall specifically what you're
12:19:12 18 asking about it.

12:19:13 19 Q. Okay. Well --

12:19:14 20 A. But I've seen the statistics in the box and the map.

12:19:20 21 Q. All right. So let's see if we can find that.

12:19:30 22 MR. DUNN: It's Brooks' Exhibit 7.

12:19:30 23 MR. SWEETEN: Okay.

12:19:37 24 MR. DUNN: The clearer version is 9. I don't know if
12:19:40 25 you'd like that, Mr. Sweeten.

12:19:40 1 MR. SWEETEN: Thank you. I'll use 7.

12:19:43 2 If we can pull up 7. There we go.

12:19:45 3 BY MR. SWEETEN:

12:19:46 4 Q. Now, look down. I know it's a little hard to see.

12:19:48 5 It's a picture that you took in that meeting, correct?

12:19:51 6 A. It's a picture that Mr. Jones took.

12:19:54 7 Q. Your chief of staff took in the meeting?

12:19:56 8 A. Yes.

12:19:56 9 Q. And what this shows is the adjacent population,
12:20:02 10 whether they're over or under it -- one over or one under, north
12:20:04 11 of SD-10, correct?

12:20:10 12 A. Could I -- where is this in here, because I can't see
12:20:16 13 that on my screen?

12:20:20 14 Q. It's plaintiff's Exhibit 7. It should be in one of
12:20:26 15 those books.

12:20:49 16 A. I can see it now.

12:20:51 17 Q. You can see those better now?

12:20:52 18 A. This is better.

12:20:53 19 Q. So let's take a look. So the maps you said that you
12:20:57 20 were shown at that first meeting -- and let's get a date on that
12:21:01 21 first meeting that you attended. Okay. And as I understand it,
12:21:06 22 that was November 19th, 2020; is that right?

12:21:10 23 A. Okay.

12:21:12 24 Q. That's correct?

12:21:12 25 A. I'll agree to that.

12:21:14 1 Q. All right. And it was the meeting that you testified
12:21:18 2 you attended with Mr. Jones?

12:21:21 3 A. Right.

12:21:22 4 Q. Okay. And you were shown these two maps?

12:21:25 5 A. That is correct.

12:21:25 6 Q. Now, these maps have a fairly limited purpose, right?
12:21:29 7 They're ACS 2014 to 2018, the 5-year estimates, that show the
12:21:36 8 existing populations of those districts based on population
12:21:39 9 growth or decrease, right?

12:21:41 10 A. Right.

12:21:41 11 Q. Okay. So that's what you were shown in that second --
12:21:45 12 in that first meeting you attended, but the second one that
12:21:47 13 we've talked about today, you got it?

12:21:49 14 A. Yes.

12:21:49 15 Q. Very good.

12:21:51 16 Now, I want to talk about what was then the third and
12:21:55 17 final meeting that you had with Senator Huffman and that was on
12:21:59 18 September 14th, 2021, correct?

12:22:03 19 A. Correct.

12:22:03 20 Q. Now you would agree with me that that was six days
12:22:07 21 before the third special session began, that meeting?

12:22:11 22 A. Yes.

12:22:11 23 Q. Okay. And would you agree with me that when you
12:22:17 24 walked in the room, displayed on the board, was the map that had
12:22:20 25 already been drawn?

12:22:21 1 A. Yes, sir.

12:22:21 2 Q. All right. And you looked at it and it had a
12:22:26 3 configuration of Tarrant County and it had also added two
12:22:31 4 additional counties to it, correct?

12:22:32 5 A. That's correct.

12:22:32 6 Q. And that I think you testified was -- ended up as Map
12:22:36 7 2101, correct?

12:22:38 8 A. That's correct.

12:22:39 9 Q. Now, you then indicated that at that time, you handed
12:22:46 10 over seven or eight maps that showed racial shading of Tarrant
12:22:53 11 County; you had Asian population, White population, Black
12:22:56 12 population, Hispanic population, right?

12:22:58 13 A. That's correct.

12:22:58 14 Q. All right. Handed those over, after the map had been
12:23:02 15 constructed, though, the one that you're looking at on the wall?

12:23:06 16 A. That's right.

12:23:07 17 Q. All right. Now, in that meeting with Senator Huffman
12:23:10 18 was Anne Mackin and Sean Opperman, correct?

12:23:13 19 A. That's correct.

12:23:13 20 Q. And I think you testified that Ms. Mackin said, I feel
12:23:17 21 uncomfortable?

12:23:18 22 A. I think she did.

12:23:19 23 Q. And that was when you handed over the map showing all
12:23:24 24 of the racial shading?

12:23:25 25 A. I handed those maps over one by one --

12:23:25 1 Q. Okay.

12:23:27 2 A. -- and cited the heading on each map as I handed them
12:23:32 3 to Senator Huffman.

12:23:34 4 Q. Okay. Very good. And at that time, Senator Huffman,
12:23:36 5 being a judge, initialled those maps and had you initial them
12:23:42 6 and you-all both did that, correct?

12:23:43 7 A. That's correct. She would initial one map and handed
12:23:46 8 it to me and I would initial it.

12:23:46 9 Q. Okay.

12:23:49 10 A. And then she would take the second map, initial it and
12:23:52 11 hand it to me and I would initial it, and I gave them back to
12:23:57 12 her.

12:23:57 13 Q. And you gave them back to her and she had those?

12:23:57 14 A. Yes, sir.

12:23:58 15 Q. Okay. Again after the configuration that you already
12:24:02 16 were objecting to was shown to you, right?

12:24:05 17 A. Yes.

12:24:05 18 Q. Were you instructed to do that?

12:24:09 19 A. No. My chief of staff just said, I have these maps,
12:24:13 20 and that's what we did.

12:24:14 21 Q. Okay. Now, there was some conflicting testimony
12:24:18 22 earlier that I want to make sure that we're clear on.

12:24:21 23 The day before the Senate Committee hearing, there was
12:24:26 24 another map that was introduced, correct?

12:24:29 25 A. Yep.

12:24:30 1 Q. And that map had additional drawings on it, correct,
12:24:37 2 additional changes to it, right?

12:24:38 3 A. It did.

12:24:38 4 Q. Now, one of the things that had not changed, however,
12:24:42 5 between your meeting on September 14th, 2021, and September 23,
12:24:50 6 2021, was the configuration of the district in Tarrant County?

12:24:56 7 A. I believe that's correct.

12:24:57 8 Q. Okay. And, in fact, I think we can show you that,
12:25:00 9 just to confirm --

12:25:02 10 A. I believe that's correct.

12:25:03 11 Q. -- if we can look on the TLC website and do an overlay
12:25:08 12 of Plan S2101 and Plan S2108.

12:25:40 13 Okay. Now, you're looking at the overlay between plan
12:25:45 14 2101 and 2108. See that, in Tarrant County, that's what you are
12:25:53 15 focussing on?

12:25:54 16 A. Okay.

12:25:55 17 Q. It's an identical match, right?

12:25:57 18 A. For Tarrant County --

12:25:57 19 Q. For Tarrant County?

12:26:01 20 A. -- for that portion of it?

12:26:02 21 Q. Right.

12:26:02 22 A. I think so.

12:26:03 23 Q. Okay. So, the original map that she showed you in her
12:26:07 24 office was the same map that was introduced just before the
12:26:14 25 first Committee hearing on this issue, correct?

12:26:14 1 A. (No response).

12:26:20 2 Q. In Tarrant County?

12:26:21 3 A. In Tarrant County, thank you.

12:26:23 4 Q. Okay. Very good.

12:26:25 5 Now, you said that you drafted a letter that was then
12:26:50 6 sent to Senator Huffman sometime after that, correct?

12:26:54 7 A. Yes.

12:26:54 8 Q. And enclosed with that letter, you said that you had a
12:26:59 9 case, correct, that you utilized a case that was attached to
12:27:04 10 that letter. Am I getting that right?

12:27:05 11 A. I utilized a case.

12:27:07 12 Q. There was a reported case that you attached?

12:27:10 13 A. Oh, a legal case.

12:27:13 14 Q. That's right.

12:27:14 15 A. Yes.

12:27:14 16 Q. Okay. And I understand you're not a lawyer, correct?

12:27:17 17 A. I am not.

12:27:18 18 Q. Okay. All right. But you were also -- I mean, I
12:27:22 19 assume you don't know, one way or the other, how complicated
12:27:27 20 voting rights jurisprudence is. Do you know how complicated it
12:27:32 21 is?

12:27:32 22 A. I do now.

12:27:33 23 Q. Okay. And you had ample counsel to assist you now,
12:27:37 24 haven't you?

12:27:37 25 A. I do.

12:27:39 1 Q. Okay. All right. Now, you were -- and we'll go back
12:27:47 2 to that -- but you were critical of the Office of the Attorney
12:27:53 3 General, on some of that Committee -- some of the committee
12:27:58 4 questioning, in particular, one of the resource witnesses you
12:28:01 5 had some criticism about and then you also have some criticism
12:28:05 6 about the fact that you were not told directly who, from the
12:28:09 7 Office of Attorney General, assisted in counseling the Senator,
12:28:15 8 right?

12:28:15 9 A. Right.

12:28:15 10 Q. Those were your two primary criticisms of my office,
12:28:21 11 right?

12:28:21 12 A. Right.

12:28:21 13 Q. Now, you would agree with me in the Office of the
12:28:26 14 Attorney General, we constitutionally, we represent state
12:28:28 15 officers when they request assistance, right?

12:28:31 16 A. Yes.

12:28:31 17 Q. You understand that goes both ways. Cases that
12:28:35 18 involve democratic members will often ask our office to assist
12:28:39 19 them, and then other -- and sometimes leadership and other
12:28:43 20 people will ask for our assistance, that's not uncommon. We are
12:28:46 21 the law firm for the State, right?

12:28:48 22 A. Right.

12:28:49 23 Q. And you were given the name of the individual who, at
12:28:55 24 that hearing, an individual that provided consultation to
12:28:58 25 Senator Huffman, that was given publicly in that hearing, wasn't

12:29:01 1 it --

12:29:01 2 A. The one gentleman --

12:29:01 3 Q. Yeah.

12:29:03 4 A. -- who testified as an expert witness.

12:29:05 5 Q. No. I'm talking about the person -- are you saying
12:29:09 6 that you were never given the name, in a public forum --

12:29:13 7 A. Oh, I see.

12:29:14 8 Q. -- of an attorney that provided advice to the Senate?

12:29:20 9 A. I'm -- I certainly was witness to his testimony, yes.

12:29:27 10 Q. Okay. Sorry. We're not -- we're talking past each
12:29:27 11 other.

12:29:27 12 A. I (indiscernible) --

12:29:31 13 Q. I'm not talking about the resource witness now. I'm
12:29:34 14 talking about you asked a question and Mr. Dunn showed a
12:29:37 15 videotape of it, you asked a question about who provided legal
12:29:42 16 counsel from the Office of Attorney General --

12:29:44 17 A. Yes, I did ask that question, yes, sir.

12:29:45 18 Q. And you got the answer in that hearing, didn't you?

12:29:48 19 A. No, I didn't think I did.

12:29:50 20 Q. Okay. We'll look at that, then, in a minute.

12:29:52 21 So you don't think you got that answer?

12:29:54 22 A. I didn't think I got the answer to that.

12:29:54 23 Q. Okay.

12:29:56 24 A. I thought she said that's privileged.

12:30:00 25 Q. Now, you understand that the Office of the Attorney

12:30:04 1 General did provide a resource witness at that hearing?

12:30:08 2 A. That hearing, yes.

12:30:09 3 Q. In addition, at that hearing, was a state demographer,
12:30:14 4 participated, correct?

12:30:15 5 A. Yes.

12:30:15 6 Q. One of the Brennen center experts, that works for the
12:30:23 7 Brennan Center, Michael Lee, came in and testified about his
12:30:27 8 view of this?

12:30:27 9 A. He did.

12:30:28 10 Q. Okay. Domingo Garcia, former Congressional candidate,
12:30:37 11 came in and testified about his views?

12:30:39 12 A. Yes, he did.

12:30:39 13 Q. Okay. Senator Whitmire, you, others had the
12:30:43 14 opportunity to ask lots of questions of any of the members that
12:30:46 15 you wanted to, correct?

12:30:47 16 A. Correct.

12:30:48 17 Q. You weren't limited in time to do that. You asked all
12:30:53 18 of the questions you wanted to ask; is that --

12:30:54 19 A. I did.

12:30:55 20 Q. Now, with respect -- I think you were critical of
12:31:24 21 Senator Huffman for not having read a decision. You and
12:31:30 22 Mr. Dunn talked about that and you made much of that?

12:31:36 23 A. I answered his question, yes.

12:31:38 24 Q. Okay. You were critical of it, weren't you?

12:31:39 25 A. I am critical of it.

12:31:41 1 Q. And you -- and you've had now a year-long campaign on
12:31:47 2 the Senate District 10 to forward your view, are you familiar
12:31:53 3 with some of the seminal cases in this area?

12:31:57 4 A. I am aware of the 2012 case, but I am not aware of
12:32:02 5 other cases. I'm aware they exist. I have not read them nor
12:32:07 6 have I formed an opinion about them.

12:32:09 7 Q. Have you read *Brnovich v. Democratic National*
12:32:13 8 *Committee*, which says: Partisan motives are not the same as
12:32:16 9 racial motives?

12:32:17 10 A. No, I haven't.

12:32:18 11 Q. *Miller v. Johnson*: The good faith of the State
12:32:21 12 Legislature must be presumed.

12:32:23 13 Have you read that one?

12:32:24 14 A. No, I haven't.

12:32:25 15 Q. *Personnel Administrator of Massachusetts v. Feeney*,
12:32:28 16 that says: Discriminatory purpose implies more than intent as
12:32:31 17 volition or intent as awareness of consequences. It implies the
12:32:35 18 decision-maker selected or reaffirmed a particular course of
12:32:37 19 action, at least in part because of, not merely in spite of, its
12:32:42 20 adverse effects on an identifiable group.

12:32:46 21 Are you familiar with that holding?

12:32:48 22 A. I have not read that.

12:32:49 23 Q. *Hunt v. Cromartie*, have you heard of that?

12:32:53 24 A. No, sir.

12:32:55 25 Q. Now, you made much of the court decision, that the

12:33:02 1 Davis opinion from 2012 -- right --

12:33:06 2 A. Yes, sir.

12:33:06 3 Q. -- you said that had been decided and intentional
12:33:09 4 discrimination had been found, right?

12:33:11 5 A. Yes, sir.

12:33:11 6 Q. Okay. Let's talk about that case for a minute and a
12:33:14 7 few differences or a few issues with that case.

12:33:18 8 First of all, that was decided, don't you agree, of
12:33:21 9 Section 5 of the Voting Rights Act?

12:33:23 10 A. Yes.

12:33:24 11 Q. Section 5 has been held by the Supreme Court,
12:33:28 12 particularly, the coverage in section 4 that applied to it, to
12:33:31 13 being unconstitutional, correct?

12:33:33 14 A. Sir, I'm, not a constitutional expert. I can't speak
12:33:37 15 to that.

12:33:38 16 Q. Okay. Well, that's fair enough, but let me ask you
12:33:41 17 just a couple of more questions, see what you know about it,
12:33:43 18 because you've certainly talked about it on direct. Okay?

12:33:45 19 A. Okay.

12:33:45 20 Q. And one of these questions is this. Do you know what
12:33:47 21 the standard of proof is or was under the now and constitutional
12:33:51 22 Section 5?

12:33:52 23 A. I do not.

12:33:53 24 Q. Do you know that Texas had the burden of proof to
12:33:55 25 prove nondiscrimination. If it's facts and intent, they had the

12:34:01 1 burden to prove that, did you know that?

12:34:02 2 A. I do not.

12:34:03 3 Q. Do you know the venue of that was in D.C.?

12:34:07 4 A. I do not.

12:34:09 5 Q. Do you know that that court found there was not --
12:34:11 6 that Senate District 10 was not a coalition district?

12:34:14 7 A. I did not.

12:34:15 8 Q. Now, it's the -- I know you're a freshman Senator, but
12:34:26 9 I it's the case and you know this, that typically the way
12:34:32 10 redistricting works is that the Senate primarily works on the
12:34:37 11 crafting the lines of the Senate map and House primarily works
12:34:41 12 on the crafting the lines of the House, correct?

12:34:44 13 A. Correct.

12:34:44 14 Q. Okay. That's the way it works typically, right.
12:34:48 15 Okay.

12:34:48 16 Now, the Seliger affidavit, are you familiar with the
12:35:03 17 fact that it was entered as Exhibit 1, in your case, and it was
12:35:08 18 cited in bold on the first page of the response to the PI?

12:35:13 19 A. I am.

12:35:13 20 Q. Okay. And are you familiar -- have you had the
12:35:16 21 opportunity to review his testimony in this case?

12:35:20 22 A. Yes, I have.

12:35:20 23 Q. Okay.

12:35:22 24 A. Oh, I'm sorry. His testimony...

12:35:23 25 Q. In this case.

12:35:24 1 A. No, I have not. I'm sorry. I have not.

12:35:27 2 Q. Fair enough.

12:35:27 3 A. I have not.

12:35:28 4 Q. Now, I want to go through some additional questions

12:35:31 5 with you. So it's clear on the record, you were the Democratic

12:35:47 6 Representative for SD-10 Fort Worth?

12:35:50 7 A. That's correct.

12:35:50 8 Q. And you're not African-American and you're not Latino?

12:35:55 9 A. I'm not any one of those.

12:35:56 10 Q. You're not Asian?

12:35:58 11 A. I'm not Asian.

12:36:00 12 Q. You were first elected in 2017?

12:36:03 13 A. That's correct.

12:36:03 14 Q. And you took office in January and you're closing out

12:36:07 15 the end of your first term, correct?

12:36:10 16 A. I am.

12:36:11 17 Q. Are you campaigning now?

12:36:13 18 A. No, I'm not.

12:36:14 19 Q. Have you filed for re-election --

12:36:17 20 A. Yes, I have.

12:36:18 21 Q. -- for Senate District 10?

12:36:21 22 Now, when you ran for the first time -- excuse me --

12:36:26 23 was in 2018, against Konni Burton, correct?

12:36:31 24 A. Correct.

12:36:32 25 Q. And she was the incumbent Republican?

12:36:35 1 A. She was.

12:36:36 2 Q. And it was a fairly close race?

12:36:39 3 A. It was.

12:36:40 4 Q. And it happened to be a very good year for Democrats,

12:36:45 5 2018?

12:36:46 6 A. It was a good year.

12:36:47 7 Q. Some have called it a blue wave?

12:36:50 8 A. Some have.

12:36:51 9 Q. Some have called it a blue tsunami?

12:36:56 10 A. Some have.

12:36:57 11 Q. That was the year that Senator Cruz and Senator

12:37:02 12 O'Rourke had a very close race within two percentage points were

12:37:08 13 statewide -- for a statewide election, you would agree with me,

12:37:11 14 that was pretty close, that was pretty unusual?

12:37:14 15 A. Yes, I think so.

12:37:17 16 Q. And your seat during that election, was not the only

12:37:22 17 game that Texas Democrats made in State Senate that year, right?

12:37:26 18 A. That's right.

12:37:27 19 Q. Nathan Johnson defeated the Republican incumbent Don

12:37:31 20 Huffines, didn't he?

12:37:32 21 A. That's correct.

12:37:33 22 Q. Now, you'd agree that Tarrant County is primarily a

12:37:53 23 Republican county?

12:37:54 24 A. I don't think that's true anymore.

12:37:56 25 Q. Okay. Who is the County Judge of Tarrant County?

12:38:01 1 A. Judge Glenn Whitley.

12:38:03 2 Q. And Mr. Whitley, he's been elected since 2007, hasn't
12:38:07 3 he?

12:38:07 4 A. I think that's right.

12:38:09 5 Q. He's a Republican?

12:38:10 6 A. He is a Republican.

12:38:11 7 Q. If Mr. Brooks, now I assume you defer a little bit to
12:38:19 8 Mr. Brooks, but if he believes it's a Republican, would you
12:38:24 9 disagree with that?

12:38:25 10 A. I do disagree with that.

12:38:26 11 Q. Now, in SD-10, you would agree with me that the last
12:38:31 12 six contests for SD-10, Republicans one half of those and
12:38:35 13 Democrats won half of those?

12:38:38 14 A. I think that's a fair analogy.

12:38:40 15 Q. I'm going to take a quick look at those contests.

12:38:44 16 And I'm going to put up Defendants' Exhibit Number 18
12:38:48 17 at 1, please. All right.

12:38:53 18 I'm going to show you, these are documents from the
12:38:55 19 Secretary of State's office, and this is 2002, general election
12:39:00 20 11-5, 2002, do you see that on top?

12:39:04 21 A. I do.

12:39:04 22 Q. If we can turn to Senate District 10 in that race.

12:39:16 23 All right. Would you agree that those election
12:39:20 24 results show that in 2002, Kim Brimer beat Hal Ray, the
12:39:32 25 Democrat --

12:39:32 1 A. I see that.

12:39:33 2 Q. -- 58.71 39.93 percent?

12:39:33 3 A. I see that.

12:39:34 4 Q. Sound beating there by almost 20 percent points,

12:39:36 5 right?

12:39:37 6 A. Yes.

12:39:38 7 Q. Well, that's a sound beating, isn't it?

12:39:40 8 A. Yes, it is. I'm just doing your math.

12:39:54 9 MR. SWEETEN: Let's go to the next page. If we could,

12:39:56 10 the next race.

12:40:07 11 BY MR. SWEETEN:

12:40:08 12 Q. You can see where it says Race Summary Report 2004

12:40:10 13 General Election, correct?

12:40:11 14 A. Yes.

12:40:12 15 Q. And if we move to the bottom of the next page, it says

12:40:14 16 Senate District 10, right?

12:40:15 17 A. Right.

12:40:16 18 Q. In that race, the Republican incumbent Kim Brimer

12:40:21 19 defeated Democratic candidate Andrew Hill, right?

12:40:23 20 A. That's correct.

12:40:24 21 Q. Brimer won the seat 59.25 percent to 40.75, right?

12:40:29 22 A. That's right.

12:40:29 23 Q. About a 19 point spread?

12:40:32 24 A. About.

12:40:32 25 Q. Let's move to the '08 election. We turn to page five.

12:40:36 1 We can see it says Race Summary Report '08 General Election.

12:40:41 2 A. That's correct.

12:40:42 3 Q. Going to the next page, you see where it says Senate

12:40:46 4 District 10, right?

12:40:46 5 A. I do.

12:40:47 6 Q. And here we have long-term Republican incumbent Kim

12:40:53 7 Brimer against Democrat Wendy Davis; is that right?

12:40:55 8 A. Yes.

12:40:55 9 Q. And in upset victory, Davis beats Kim Brimer, correct?

12:41:01 10 A. That's correct.

12:41:02 11 Q. All right. And it was a 2.4 percent margin in that

12:41:06 12 win, right?

12:41:07 13 A. Right.

12:41:07 14 Q. Let's go to the 2012 election now. And the race

12:41:12 15 summary report for '12 general election, you can see where it

12:41:16 16 says State Senate District 10, right?

12:41:19 17 A. I see it.

12:41:20 18 Q. And you would agree that the Democrat incumbent Davis

12:41:23 19 ran against Republican Mark Shelton, right?

12:41:25 20 A. Right.

12:41:25 21 Q. And she beat him 51.12 percent to Mr. Shelton's 48.88

12:41:33 22 right?

12:41:34 23 A. That's correct.

12:41:34 24 Q. All right. I believe the margin is 2.24 percent,

12:41:37 25 right?

12:41:37 1 A. Right.

12:41:38 2 Q. And then we can go one more, which is the '14
12:41:42 3 election. You can see where it says Race Summary Report for the
12:41:45 4 '14 general?

12:41:46 5 A. Correct.

12:41:46 6 Q. And you would agree that it says that Konni Burton,
12:41:51 7 Republican, ran against the Democratic Candidate Libby Willis?

12:41:54 8 A. Yes.

12:41:55 9 Q. And Ms. Burton won that election contest 52.83 percent
12:42:03 10 of the vote compared to Willis's 44.72, right?

12:42:05 11 A. I see that.

12:42:07 12 Q. And then I think we've talked about your election, but
12:42:09 13 you wouldn't not disagree that Konni Burton, that you defeated
12:42:14 14 her 51.73 to 48.27, correct?

12:42:20 15 A. I wouldn't disagree with that.

12:42:24 16 Q. Okay. Very good.

12:42:25 17 Now, I want to go back to your declaration, which I
12:42:28 18 think was talked about.

12:42:31 19 MR. SWEETEN: If we could pull, Mr. Christopher,
12:42:33 20 plaintiff's Exhibit 2, paragraph number 8.

12:42:45 21 BY MR. SWEETEN:

12:42:46 22 Q. Now, here you say and here you're describing the
12:42:51 23 November 19th, 2020, meeting that you had with Ms. Huffman,
12:42:55 24 correct?

12:42:55 25 A. That's correct.

12:42:56 1 Q. All right. And you asserted at that meeting that you
12:42:59 2 explained to Senator Huffman that SD-10's population was
12:43:04 3 majority-minority, correct?

12:43:05 4 A. That's correct.

12:43:06 5 Q. Now we talked about that very issue at your
12:43:09 6 deposition, correct?

12:43:10 7 A. We did.

12:43:10 8 Q. And we pulled out at that time the actual Citizen
12:43:15 9 Voting Age Population figures, correct?

12:43:17 10 A. Yes, you did.

12:43:18 11 Q. And you would agree with me, and I can pull them up
12:43:21 12 and we can do it again or you can just answer my question. You
12:43:25 13 would agree with me that Hispanic CVAP in the Senate District 10
12:43:32 14 is 24 percent, that Black CVAP is 20.5 percent and that White
12:43:37 15 CVAP is listed in that exhibit, which is Exhibit 22, was
12:43:42 16 53.9 percent?

12:43:43 17 A. I don't disagree with the CVAP.

12:43:46 18 Q. And I believe Asian CVAP was 3.2 percent. Does that
12:43:52 19 sound right?

12:43:52 20 A. Yes, it is.

12:43:53 21 Q. So even if you add it, assuming they all voted
12:43:57 22 together -- let's put that aside -- even if you added the
12:44:01 23 Citizenship Voting Age Population for Asian, Hispanic and the
12:44:04 24 Black population, you're not even cresting over 50 percent,
12:44:08 25 right?

12:44:11 1 A. Near 50 percent.

12:44:12 2 Q. My question was different. My question is, you don't
12:44:16 3 get over 50 percent?

12:44:18 4 A. In the voting age population.

12:44:20 5 Q. Under the citizen age population?

12:44:22 6 A. I will agree to that.

12:44:24 7 Q. Okay. Now, it's obvious you would agree with me that
12:44:57 8 Anglo votes are necessary to win Senate District 10 under
12:45:01 9 (indiscernible), correct?

12:45:01 10 A. Under its current configuration, yes.

12:45:04 11 Q. Right. And you have actually said, haven't you, that
12:45:09 12 Republicans voted for you in Senate District 10?

12:45:11 13 A. I believe that I received a small percentage of
12:45:15 14 crossover votes.

12:45:16 15 Q. And you believe Democrats -- White Democrats voted for
12:45:19 16 you?

12:45:19 17 A. I believe what?

12:45:20 18 Q. You believe White Democrats voted for you?

12:45:23 19 A. Oh, yes.

12:45:24 20 Q. Okay. I think you testified to this, but I want to
12:45:38 21 make sure it's on the record. You were not on the Senate's
12:45:43 22 special committee on redistricting during the third called
12:45:46 23 Senate?

12:45:46 24 A. I was not on the redistricting committee.

12:45:48 25 Q. Now prior to the redistricting cycle, you had not

12:45:53 1 personally used the RedAppl program, correct?

12:45:57 2 A. I did not personally use the RedAppl program.

12:46:01 3 Q. And this is your first session, correct?

12:46:03 4 A. That's correct.

12:46:03 5 Q. So you're saying that at no point did you get on the
12:46:06 6 RedAppl, even during the session or after?

12:46:10 7 A. That's correct.

12:46:11 8 Q. Now, you understand that RedAppl was developed by the
12:46:18 9 Texas Legislative Council to assist map drawers in creating
12:46:24 10 districts, correct?

12:46:25 11 A. Yes, I do.

12:46:26 12 Q. And you're only vaguely familiar with how it works,
12:46:31 13 correct?

12:46:31 14 A. I agree.

12:46:32 15 Q. You don't know how its shading tools work?

12:46:36 16 A. I have a vague understanding of it.

12:46:38 17 Q. So you know that you can turn them on or keep them
12:46:42 18 turned off, right?

12:46:45 19 A. (No response).

12:46:49 20 Q. You do know that if a person wants to utilize racial
12:46:54 21 shading in map drawing, the user of RedAppl has to specifically
12:46:59 22 select that option to turn that on. Do you know that?

12:47:01 23 A. I do not know that, personally.

12:47:03 24 Q. Okay. Let's show your deposition. Let's see if you
12:47:06 25 did last week.

12:47:07 1 MR. SWEETEN: If we can pull up Ms. Powell's
12:47:09 2 deposition, page 49, 16 through 22 are the lines.

12:47:34 3 Okay. I don't think that's the quote we're looking
12:47:37 4 for. Can you pull that down?

12:47:48 5 JUDGE SMITH: I was watching the transcript here from
12:47:51 6 the court reporter and it didn't show an answer from the witness
12:47:53 7 on your answer of whether she knew that you could turn it on or
12:47:58 8 turn it off. You want to make sure there's an answer to that
12:48:02 9 one way or the other?

12:48:04 10 BY MR. SWEETEN:

12:48:04 11 Q. Let me ask you this.

12:48:05 12 Do you know if you can turn on or turn off shading in
12:48:09 13 RedAppl?

12:48:11 14 A. I have no personal knowledge of how to operate
12:48:15 15 RedAppl. I don't know the answer to that question,
12:48:19 16 definitively. I don't know.

12:48:20 17 Q. Understood. So if there's testimony to that effect
12:48:23 18 that you have to specifically put on racial shading to utilize
12:48:28 19 it, that there's a feature that you click or don't click, you
12:48:32 20 would not have any reason to dispute that?

12:48:33 21 A. No, I don't dispute it.

12:48:35 22 Q. And, in fact, it's the case that there was a colloquy
12:48:39 23 between you and Senator Huffman where she told you that very
12:48:43 24 thing, and said that racial shading was never turned on. You
12:48:46 25 remember that discussion, right?

12:48:47 1 A. I do.

12:48:47 2 Q. And you have no basis to contest that, do you?

12:48:51 3 A. No, I don't.

12:48:53 4 Q. Now, it's also the case that you were not in the room
12:48:57 5 when Mr. Opperman, Ms. Mackin or Senator Huffman drew the lines
12:49:04 6 of your district?

12:49:05 7 A. I was not in the room.

12:49:09 8 Q. And it stands to reason you have no personal knowledge
12:49:13 9 as to how that was drawn on the RedAppl?

12:49:17 10 A. That's true, I have no personal knowledge.

12:49:19 11 Q. In fact, you couldn't even tell me, as you're sitting
12:49:21 12 here today, whether another map program was used or red apple,
12:49:25 13 right?

12:49:25 14 A. I couldn't tell you.

12:49:27 15 Q. That's right, you don't know, right?

12:49:28 16 A. I don't know.

12:49:29 17 Q. Okay. I just want to get that clear on the record.

12:49:43 18 Now, throughout the redistricting process, Senator
12:49:47 19 Huffman would -- well, she would often articulate the criteria
12:49:51 20 she followed when drafting district lines; she said that
12:49:54 21 publicly, correct?

12:49:55 22 A. That's correct.

12:49:56 23 MR. SWEETEN: Let's pull up, if we could, the clip of
12:50:01 24 the Redistricting Committee, the first one.

12:50:05 25 And this is -- I believe this to be --

12:50:10 1 (Video and audio start).

12:50:10 2 *UNKNOWN SPEAKER: Committee amendment number 1...*

12:50:16 3 BY MR. SWEETEN:

12:50:17 4 Q. Okay. So I believe this to be Defendants' Exhibit 62
12:50:21 5 at 2, and I think it's line --

12:50:28 6 MR. SWEETEN: Do we've the lines on there?

12:50:39 7 One second.

12:50:39 8 BY MR. SWEETEN:

12:50:56 9 Q. I'm told there's no delineation numbers on what we're
12:51:00 10 about to play you, so there's no way to specifically cite, but I
12:51:04 11 will tell you it is on Defendants' Exhibit 62 at 2.

12:51:08 12 And if for some reason you want to read along with any
12:51:11 13 of those, just ask and we'll bring Defendants' binders.

12:51:11 14 (Video and audio start).

12:51:47 15 *MALE SPEAKER: -- Chair, based on Committee Amendment*
12:51:51 16 *Number 1, I recognize the Senator Huffman to explain*
12:51:58 17 *the committee amendment.*

12:51:58 18 *SENATOR HUFFMAN: Right.*

12:52:02 19 *Members, before discussing this specific*
12:52:05 20 *amendment, I'd like to remind everyone of the*
12:52:08 21 *criteria I used in proposing and considering the new*
12:52:10 22 *districts. We focussed on complying with all*
12:52:13 23 *applicable law, including the Constitution, the*
12:52:16 24 *Voting Rights Act, as district populations based on*
12:52:21 25 *the 2020 Census focussed on keeping political*

12:52:25 1 subdivisions together, keeping communities of
12:52:28 2 interest together, preserving the cores of the
12:52:30 3 existing districts, creating geographically compact
12:52:33 4 districts, addressing partisan considerations,
12:52:36 5 protecting incumbents, and when possible, honoring
12:52:40 6 reasonable requests made by incumbent members. These
12:52:43 7 considerations have also guided my approach to what
12:52:45 8 proposed Committee amendments I'm able to support.
12:52:45 9 So the first...

12:52:45 10 (Video and audio stop).

12:52:45 11 BY MR. SWEETEN:

12:52:50 12 Q. So, we'll just stop there. You would agree with me
12:52:53 13 that Senator Huffman articulated what she believed were the
12:52:58 14 criteria she used for redistricting? That's what she was doing
12:53:01 15 there, correct?

12:53:01 16 A. In this clip, yes.

12:53:03 17 Q. That's what she said. And one of the things that she
12:53:06 18 said in there was partisan considerations, correct?

12:53:09 19 A. That is correct.

12:53:10 20 Q. No surprise, right?

12:53:11 21 A. That's not what she had said prior to this.

12:53:13 22 Q. Okay. Well, let's talk about that, because much has
12:53:16 23 been made of that.

12:53:17 24 But you would agree that she did give a statement a
12:53:20 25 few days before where she said it included that the -- that it

12:53:23 1 included this criteria, correct?

12:53:26 2 A. I didn't hear that statement prior to this day.

12:53:29 3 Q. Okay. So if she said the word it "included," that
12:53:33 4 doesn't necessarily means that's everything at that certain time
12:53:39 5 that she said it, right?

12:53:41 6 A. I have no idea of that.

12:53:42 7 Q. Okay. Well, you would agree that if in- -- that you
12:53:44 8 could say, "included," but that doesn't necessarily -- that
12:53:47 9 doesn't mean I'm about to provide a list, does it?

12:53:53 10 A. I would assume if she provides a list, that that's the
12:53:55 11 list she intends to go by.

12:53:57 12 Q. And she just provided a list here, where she was
12:54:00 13 talking to the Senate Redistricting Committee and said
12:54:06 14 partisanship, correct?

12:54:06 15 A. Correct.

12:54:06 16 Q. Okay.

12:54:07 17 A. In this one instance.

12:54:08 18 Q. But all of this aside, whatever she said, you've
12:54:10 19 already testified that you knew this was a partisan
12:54:14 20 redistricting, right, you knew that?

12:54:18 21 A. In Texas, everything is partisan.

12:54:21 22 Q. And you knew that you were vulnerable as a Democrat --
12:54:25 23 as a freshman Democrat?

12:54:26 24 A. I did not know I was vulnerable, because Sean Opperman
12:54:32 25 had told my staff that they didn't think there was any need for

12:54:32 1 the district to change.

12:54:32 2 Q. And you were --

12:54:36 3 A. It was likely going to stay the same.

12:54:38 4 Q. Ma'am, you weren't even in that conversation.

12:54:40 5 A. I wasn't, but --

12:54:40 6 Q. And you weren't --

12:54:41 7 A. -- my staff was.

12:54:42 8 Q. You understand that that conference occurred a year
12:54:44 9 and a half before actual Census figures were out, correct?

12:54:48 10 A. I do.

12:54:50 11 Q. You understand that there wasn't even a senator in the
12:54:52 12 room when that conversation took place, right?

12:54:55 13 A. Right.

12:54:56 14 Q. Okay. You understand it is senators who make the
12:54:59 15 decisions on what -- what is going to be -- how things are going
12:55:01 16 to be redistricted, right?

12:55:04 17 A. I'll accept that.

12:55:05 18 Q. Okay. They make the decisions in committee?

12:55:08 19 A. They do make decision.

12:55:10 20 Q. They make decisions on the floor?

12:55:13 21 A. (No response).

12:55:13 22 Q. A lot can happen, also, in a year and a half?

12:55:16 23 A. Certainly.

12:55:17 24 Q. Particularly, when the official population numbers
12:55:20 25 come out and redistricting actually starts in earnest, right?

12:55:24 1 A. Right.

12:55:25 2 Q. And there's something else, too, right? And that is
12:55:28 3 that Census data came out very late in 2021, correct?

12:55:33 4 A. It did come late.

12:55:35 5 Q. It came out late, because the federal government,
12:55:38 6 although statutorily bound to provide the information by
12:55:42 7 April 1st, did not get it out, the official data, until
12:55:48 8 September 16th, 2021?

12:55:48 9 A. I'll accept it, if you say it is.

12:55:50 10 Q. You don't disagree with it, right?

12:55:52 11 A. I'm not disagreeing.

12:55:53 12 Q. Now, you would agree with me that the State of Texas
12:55:55 13 had already been sued at the time that -- that the Census data
12:55:59 14 came out, by the Gutierrez plaintiffs, for it -- for having a
12:56:04 15 map -- one of the things they argued is that the maps were, you
12:56:08 16 know, malapportioned, right? So there was already litigation
12:56:14 17 starting in September and October about the fact that the
12:56:17 18 redistricting maps had not been completed, right?

12:56:19 19 A. I'll accept that, if you say so.

12:56:21 20 Q. You would agree that this was a historically
12:56:24 21 compressed time period for redistricting to be conducted, wasn't
12:56:28 22 it?

12:56:28 23 A. I think it is a compressed time period.

12:56:31 24 Q. And that's because of COVID-19, the unprecedented
12:56:34 25 pandemic that we -- you know, a 100-year pandemic came along and

12:56:37 1 moved things, including Census data getting to states, right?

12:56:41 2 A. Yes.

12:56:42 3 Q. What day is candidate filing period, Senator Powell?

12:56:48 4 A. December the 8th; is that right?

12:56:51 5 Q. That's the last day. The first day is November 13th,

12:56:51 6 isn't it?

12:56:56 7 A. I wouldn't disagree with that.

12:56:57 8 Q. Okay. There's about a month window and to have

12:57:00 9 candidates filing, you have to have districts figured out,

12:57:04 10 right?

12:57:05 11 A. Right.

12:57:07 12 Q. So this Legislature was under intense pressure, being

12:57:12 13 sued in some quarters, in trying to get a map, trying to get

12:57:16 14 maps out, so an election could be run, right?

12:57:22 15 A. I'm not going to agree to intense pressure. The time

12:57:27 16 frame is what it is.

12:57:28 17 Q. Okay. Well, you would agree with me that in that

12:57:32 18 30-day period, between September 20th and October 19th, that

12:57:38 19 the -- which is a 30-day special session -- let me ask it a

12:57:42 20 better way.

12:57:42 21 Special sessions last 30 days, right?

12:57:44 22 A. Right.

12:57:45 23 Q. The Governor called a special session back in early

12:57:48 24 September, saying we're going to have a 30-day session, and part

12:57:50 25 of what we were -- are going to consider is redistricting,

12:57:52 1 right?

12:57:53 2 A. Right.

12:57:53 3 Q. And you would agree with me that in that 30-day
12:57:56 4 period, the Legislature, both Houses, got four maps passed; the
12:58:03 5 SBOE, Congress, House and Senate, right?

12:58:06 6 A. That is right.

12:58:06 7 Q. Now, I know you're a freshman, but are you -- I
12:58:10 8 mean -- well, I'll ask a different question.

12:58:12 9 But they were all signed by the Governor, right?

12:58:18 10 A. Yes.

12:58:18 11 Q. October 25th, they were signed by the Governor, right?

12:58:23 12 A. Right.

12:58:23 13 Q. Just in time for candidate filing, right?

12:58:28 14 A. Yes.

12:58:31 15 Q. Okay. Let's go, if we could, let's look at -- I
12:58:36 16 believe this is Exhibit 64. There's a video clip of the Senate
12:58:41 17 debate at 15:13 to 16:4.

12:58:45 18 MR. SWEETEN: Could you play it?

12:58:45 19 JUDGE GUADERRAMA: Mr. Sweeten, it is almost
12:58:49 20 1 o'clock.

12:58:49 21 MR. SWEETEN: Okay.

12:58:49 22 JUDGE GUADERRAMA: Should we take a lunch break now or
12:58:49 23 wait till your done?

12:58:54 24 MR. SWEETEN: I probably have 20 more minutes, just do
12:58:58 25 at the other end. That sounds great, Judge Guaderrama.

12:58:59 1 THE COURT: All right. We're going to go ahead and
12:59:00 2 take our lunch recess. If you-all be back at 2 o'clock, we'll
12:59:05 3 resume our proceedings then.

12:59:07 4 Ms. Powell, if you would be back at 2:00, thank you.

12:59:13 5 COURTROOM SECURITY OFFICER: All rise.

6 (Lunch break at 12:59 p.m.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /s/KATHLEEN ANN SUPNET
Kathleen A. Supnet, CSR

February 23, 2022
Date

KATHLEEN A. SUPNET, CSR